IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNALOT,
PLAINTIFFS IN ERROR,

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO AFFIRM, MOTION TO AFFIRM, STATEMENT IN SUPPORT OF SAID MOTION, AND OPINION OF COURT BELOW.

W. A. KINCAID,
A. B. BROWNE,
ALEX. BRITTON,
EVANS BROWNE,
Attorneys for Defendant in Error.

INDEX.

	Page
Notice of motion to affirm	1
Motion to affirm	2
Statement	3–8
Opinion of court below	9–101

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNALOT,
PLAINTIFFS IN ERROR,

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO AFFIRM.

To H. W. VAN DYKE, ESQ.,
Attorney for Plaintiffs in Error:

Please take notice that on Monday, October the thirteenth, nineteen hundred and thirteen, at the coming in of the court, or as soon thereafter as counsel can be heard, a motion to affirm the judgment in the above-entitled cause will be submitted to the Supreme Court of the United States. Printed copy of such motion and statement to be submitted in support thereof is hereto attached and served upon you.

W. A. KINCAID,
A. B. BROWNE,
ALEX. BRITTON,
EVANS BROWNE,
Attorneys for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNALOT, *Plaintiffs in Error,*

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Motion to Affirm.

Comes now E. Finley Johnson, the defendant in error in the above-entitled cause, and by counsel moves this honorable court to affirm the judgment of the Supreme Court of the Philippine Islands entered therein, on the ground that it is manifest that the writ of error was taken for delay only, and that the questions on which the decision of the cause depends are so frivolous as not to need further argument.

Respectfully submitted,

W. A. KINCAID,
A. B. BROWNE,
ALEX. BRITTON,
EVANS BROWNE,
Attorneys for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNOLOT, *Plaintiffs in Error,*

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Statement.

This is an action of tort brought by the plaintiffs in error on this record, husband and wife, against the defendant in error, an associate justice of the Supreme Court of the Philippine Islands, for the alleged wrongful conduct of the latter, acting in his official capacity, resulting in damage to the former. The parties will be referred to hereafter as plaintiffs and defendant respectively.

The case was heard in the Court of First Instance of Manila on complaint and demurrer. Judgment was entered dismissing the complaint and the appeal to the Supreme Court of the Philippines resulted in an affirmance of the judgment of the trial court. The case is here on writ of error to review that judgment.

The complaint alleges, by way of inducement, that on September 5, 1905, the plaintiff Alzua obtained a judgment

in the Court of First Instance of Manila, which was declared to be a lien on two stores located in Manila. Execution issued on the judgment and the sheriff levied on one of the stores. Thereupon two sons of one of the judgment debtors came forward, claimed an interest in the stock of the store levied on, and made demand on the sheriff for the dismissal of the levy. The plaintiff Alzua executed a bond of indemnity against the claims of the sons, to the sheriff, and the latter then proceeded to advertise and sell the store levied on. The sons at once brought suit against the sheriff and Alzua for an injunction. The lower court dismissed the bill of complaint, and on appeal to the Supreme Court of the Philippines an order of affirmance was entered, the court reserving the right to file its opinion later on. The Supreme Court adjourned shortly afterwards, and stood adjourned from March 31st to July 1st, 1907. During the vacation of the court the defendant entered an order revoking the prior order of affirmance and substituting an order of reversal therefor. This action on the part of the defendant is alleged to have been willfully done with intent to injure the plaintiff Alzua. The complaint does not allege, but the Supreme Court of the Islands expressly found, that defendant was at that time sitting as vacation justice clothed with full interlocutory jurisdiction, and that the previous order of affirmance was entered as a result of a clerical error. Judgment was not entered on the substituted order of reversal until the court reconvened. The defendant then prepared an opinion which was signed by all of the justices who had participated in the case, setting out the grounds of the reversal of the decree of the lower court. The complaint charges that in this opinion defendant willfully and maliciously misrepresented the facts of the case. This opinion is found in 8 Phil. Rep., 539. In the interim between the entry by defendant of the substituted order of reversal and the filing of the opinion prepared by defendant, the sons brought an action against the sheriff and his sureties, in-

cluding both of the plaintiffs to this suit, setting out the *quantum* of their interest in the stock of the store levied on and sold to satisfy the judgment of the plaintiff Alzua, and praying judgment for that amount. The trial court dismissed the judgment as to all the defendants, except one. On appeal to the Supreme Court of the Islands, the judgment of the trial court was reversed, and all of the defendants were held liable to the plaintiffs in the sum of 11,068 pesos, with interest from October 14, 1905. The defendant prepared the opinion of the court (see 15 Phil. Rep., 636), and the complaint in this case alleges that in doing so he again misrepresented the facts willfully and with intent to injure the present plaintiffs. The complaint charges further that in order to satisfy the judgment entered in accordance with the opinion of the Supreme Court reversing the trial court and directing the entry of judgment against all of the defendants in the action, the present plaintiffs "were compelled to sell at great sacrifice all the property they had," valued at 40,000 pesos, the profit on which since the sale thereof had amounted to 25,000 pesos. Judgment is prayed for 65,000 pesos actual and special damages and 50,000 pesos punitive damages. It is not alleged that the sale price of the property required to be sacrified to satisfy the judgment was exactly equivalent to the amount of the judgment plus accumulated interest (12,000 pesos), or what was done with the surplus thereover, if any. In fact, the *ad damnum* seems to have been somewhat loosely drawn, and was obviously inflated for the purpose of securing a review by this court of the issues in the case.

The complaint is replete with charges of malice and bad faith on the part of the defendant as well as of a consistent intention and purpose on his part to damage the plaintiffs. After an extended examination of the entire record in this case and also the records in the cases reported in 8 Phil. Rep., 539, and 15 Phil. Rep., 636, out of which the plaintiffs' alleged cause of action arises, the court below found

that the charges of wrongdoing by defendant were wholly baseless in fact, and that in doing each and every act complained of he was acting in entire good faith and discharging his duty as a judge. It is therefore apparent that in charging the defendant with malicious purpose and intent to injure the plaintiffs in substituting the order of reversal for the previous order of affirmance, and in drafting the opinions of the court in the two cases referred to, the plaintiffs have instituted a suit entirely without foundation in fact, preferring charges of misconduct of the most serious character against defendant, and indirectly reflecting on the integrity of the entire court.

The court below, appreciating the seriousness of the charges, filed an elaborate and exhaustive opinion in the case, in which it held: (*a*) That admitting every allegation of the complaint, no cause of action was stated; (*b*) that the judgment out of which plaintiff's alleged cause of action arose was not erroneously entered and hence there was no liability on the part of defendant to respond in damages to the plaintiffs; (*c*) that an examination of the complaint, with its exhibits, showed that all the charges, both direct and inferential, of malice, bad faith, intent on the part of the defendant to damage plaintiffs, etc., were untrue in fact, and that consequently the proof of all the facts well pleaded in the complaint would be insufficient to sustain a verdict and judgment for plaintiffs. In its discussion of the law applicable to the case the court cited and quoted from *Bradley vs. Fisher*, 13 Wall., 335, which is directly in point. In that case the court said (p. 347):

> "The principle, therefore, which exempts judges of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well-ordered system of jurisprudence. * * *
>
> "Nor can this exemption of the judges from civil liability be affected by the motives with which their

> judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry."

And again (p. 350):

> "In this country the judges of the superior courts of record are only responsible to the people, or the authorities constituted by the people, from whom they receive their commissions, for the manner in which they discharge the great trusts of their office. If in the exercise of the powers with which they are clothed as ministers of justice, they act with partiality, or maliciously or corruptly, or arbitrarily, or oppressively, they may be called to an account by impeachment and suspended or removed from office."

Every possible aspect of the case was thoroughly considered by the court below, which held that under no tenable theory could the complaint be deemed to state a cause of action. The decision of this court in *Bradley vs. Fisher, supra*, as well as in the earlier case of *Randall vs. Brigham*, 7 Wall., 523, together with the exhaustive consideration given this case by the Supreme Court of the Philippines, renders the questions presented on this writ of error wholly frivolous. And the frivolity of the questions raised leads to the inference that the writ of error could have been taken for the purposes of delay only, within the principle of the rule announced in *Deming vs. Carlisle Packing Company*, 226 U. S., 102, 106. In that case this court said:

> "That the unsubstantial and frivolous character of the only Federal question relied upon of necessity embraces the conclusion that the writ was prosecuted for delay is in our opinion indubitable."

The opinion of the court below is annexed hereto. In the margin thereof the complaint is set out verbatim and reference is made in the body of the opinion to all other records and official papers bearing on the case. The opinion

with its notes thus presents the entire case. The opinion is so complete and convincing as to demonstrate that the complaint fails to state a cause of action, that defendant, Mr. Justice Johnson, properly discharged his judicial duty, and that hence the judgment should be now affirmed.

Respectfully submitted,

W. A. KINCAID,
A. B. BROWNE,
ALEX. BRITTON,
EVANS BROWNE,
Attorneys for Defendant in Error.

Decisions of the Supreme Court.

No. 7317. January 31, 1912.

EMILIA ALZUA and IGNACIO ARNALOT, *Plaintiffs and Appellants,*

vs.

E. FINLEY JOHNSON, *Defendant and Appellee.*

1. JUDGES OF SUPERIOR AND GENERAL JURISDICTION; EXEMPTION FROM CIVIL LIABILITY.—Judges of superior and general jurisdiction are not liable to respond in civil actions for damages for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction.
2. THE BODY OF THE COMMON LAW NOT IN FORCE; APPLICABILITY OF MANY OF THE RULES, PRINCIPLES, AND DOCTRINES.—While it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, "nor are the doctrines derived therefrom binding upon our courts save only in so far as they are founded upon sound principles applicable to local conditions and are not in conflict with existing law" (U. S. *vs.* Cuna, 12 Phil. Rep., 241); nevertheless many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority.
3. ID.; ID.; COMMON LAW RULES, PRINCIPLES, AND DOCTRINES USED IN AID OF CONSTRUCTION.—Many of these laws can only be construed and applied with the aid of the common law from which they are derived, and, to breathe the breath of life into some of the institutions introduced in these Islands under American sovereignty, recourse must be had to the rules, principles, and doctrines of the common law.
4. PURPOSE OF ACT NO. 136; FORMER SPANISH JUDICIAL SYSTEM ABROGATED IN SO FAR AS IT CONFLICTS.—The manifest purpose and object of Act No. 136 was to replace the old judicial system, together with its incidents and traditions drawn from Spanish sources, with a new system modeled in all its essential characteristics upon the judicial systems of the United States; and any incident of the former system which conflicts with the essential principles and settled doctrines on which the new

system rests, must be held to be abrogated by the law organizing the system.

5. ID.; ID.; PROVISIONS IN CONFLICT WITH THE DOCTRINE OF NONLIABILITY ABROGATED—All provisions of Spanish law in conflict with the doctrine of nonliability of judges set out in headnote 1 were abrogated by the enactment of Act No. 136 of the Philippine Commission.

6. ID.; ID.; SPANISH LAW NOT IN SUBSTANTIAL CONFLICT.—The rule of civil liability of judicial officers as laid down in the old Spanish law does not appear to be in substantial conflict with the rule set out in note 1.

7. ID.; ID.; CONSTRUCTION OF SECTION 9, CODE OF CIVIL PROCEDURE.—Section 9, one of the "general and preliminary" provisions of the Code of Civil Procedure, does not undertake to dispose of the whole subject of the liability of judicial officers, and is merely declaratory of the law as it existed prior to its enactment.

8. ID.; ID.; SECTION 9 NOT IN CONFLICT WITH THE NONLIABILITY RULE.—There is no necessary conflict between the provisions of section 9 of Act No. 190 and the rule of judicial liability as laid down in note 1; they should not therefore be held to repeal or to abrogate the rule by necessary implication.

9. PLEADING AND PRACTICE; EFFECT OF A DEMURRER.—A demurrer admits the truth of all material and relevant facts which are well pleaded.

10. ID.; ID.; MATTERS NOT ADMITTED BY DEMURRER.—The admission of the truth of material and relevant facts well pleaded does not extend to render a demurrer an admission of inferences or conclusions drawn therefrom, even if alleged in the pleading; nor mere inferences or conclusions of facts not stated; nor conclusions of law; nor matters of evidence; nor surplusage and irrelevant matter. Furthermore, the general rule touching admissions by demurrer does not apply where the court may take judicial notice that the facts alleged are not true; nor does it apply to legally impossible facts; nor to facts which appear unfounded by a record incorporated in the pleading or by a document referred to; nor to general averments contradicted by more specific averments.

11. ID.; ID.; RIGHT OF THE COURT TO EXAMINE RECORD; DOCUMENTS DULY INCORPORATED.—The complaint in the case at bar sets forth a series of averments of judicial error, of wilful misrepresentation of facts, and a number of specific acts done in bad faith, which it is alleged are disclosed by the mere inspection of the record in two separate appealed cases on file in this court and the court below. The complaint refers to these cases

by title and register number, and incorporates extended extracts from the records of these cases as exhibits annexed to the complaint. *Held*, That the court below was fairly entitled to examine the record in these cases in ruling on the demurrer to the complaint, and that they had been sufficiently incorporated into the complaint for that purpose by the pleader himself.

12. SUPREME COURT: PERFECTION OF THE RECORD ON APPEAL.—Under the authority of section 51 of the Code of Civil Procedure, which provides for the perfection of incomplete records, this court will issue the necessary orders directing that missing records be brought here and united with the record of a case pending on appeal as an integral part thereof.

13. SOLE PREFERENTIAL RIGHT ACQUIRED BY JUDGMENT CREDITOR.—A judgment creditor does not acquire a lien upon the property of his debtor by virtue of the filing of his complaint, the judgment, the issue of execution, or the levy thereunder, other than the mere right to a preference in the distribution of funds derived from property or estate of his judgment debtor, when, by intervention or otherwise, the judgment creditor is a proper party to the distribution proceedings and duly asserts his right as a preferred creditor. (Peterson *vs.* Newberry, 6 Phil. Rep., 261.)

14. PERSONAL OBLIGATIONS; FINAL JUDGMENT; OBLIGATION EVIDENCED BY PUBLIC DOCUMENT ENTITLED TO PREFERENCE.—A personal obligation, evidenced by a public instrument, is entitled to preference over an obligation on a promissory note merged into a final judgment which bore date subsequent to that of the public instrument. (Olivares *vs.* Hoskyn & Co., 2 Phil. Rep., 689.)

15. ID.; ID.; ORDER OF PREFERENCE OF OBLIGATIONS EVIDENCED BY PUBLIC DOCUMENTS, OR JUDGMENTS.—Credits or debts evidenced by public documents or reduced to final judgments are preferred in accordance with their respective dates. A debt evidenced by a public document dated May 9, 1905, takes preference over a final judgment dated August 1 of the same year. (Go Chuico *vs.* Ocampo et al., 7 Phil. Rep., 15.)

16. DOCTRINES WELL FOUNDED AND NOT SUBJECT TO CHANGE, EXCEPT BY LEGISLATION.—The doctrine laid down in the three preceding headnotes is not only well founded in the substantive and procedural law of these Islands, but is a rule of property of these Islands not subject to change except by legislative enactment, as a result of its development in a long and unbroken line of decisions, beginning with the case of Martinez *vs.* Holiday, Wise & Co., in the first volume of the reports.

17. PLEADING AND PRACTICE; COURTS; STIPULATIONS NOT TO BE ARBITRARILY DISREGARDED.—In the absence of proof of sharp practice

or surprise, a court has no lawful authority to disregard a fact solemnly stipulated by counsel as true, or to decline to give it its manifest legal effect in adjudicating the rights of the parties to the action.

18. Id.; Id.; Duty to Grant the Relief to Which Parties are Shown to be Entitled.—Under our system of pleading it is the duty of the courts to grant the relief to which the parties are shown to be entitled by the allegations in their pleadings and the facts proven at the trial, and the mere fact that they themselves misconstrue the legal effect of the facts thus alleged and proven will not prevent the court from placing the just construction thereon and adjudicating the issues accordingly.

19. Id.; Id.; Decision Upon the Facts as Stipulated by the Parties.—When it appears that, after abandoning the theory of recovery set forth in the original complaint, the plaintiff relied at the trial upon a different theory supported by the facts disclosed in "an agreed statement of facts" submitted to the court below, it is not error to decide the case according to the facts stipulated and the theory of the case actually relied upon at the trial rather than upon the abandoned theory of the complaint.

20. Attachment; Liabilities Established by Execution of Bond to a Sheriff.—The execution of a bond to a sheriff indemnifying him against damages resulting from an unlawful levy and sal of property, affirmatively establishes the liability of the indemnitor and his bondsmen as principals in the subsequent trespass committed by the sheriff in unlawfully holding and selling the property.

21. Id.; Id.; Theory and Effect of Executing the Bond.—The giving of an indemnity bond in such a case is equivalent to the personal interference of the indemnitor and his bondsmen in the course of the proceeding by directing or requesting the sheriff to hold and sell the goods as if they were the property of the defendants in attachment. In doing this they (the indemnitor and his bondsmen) assume the direction and control of the sheriff's future action so far as it constitutes a trespass; and they become to that extent the principals and he their agent in the transaction. This makes them responsible for the continuance of the wrongful possession and for the sale and conversion of the goods; in other words, for all the real damages which plaintiff sustains. (Lovejoy *vs.* Murray, 70 U. S., 129.)

22. Trespassers; Joint and Several Liability in Same Trespass.—"Persons engaged in committing the same trespass are joint and several trespassers, and not joint trespassers exclusively. Like persons liable on a joint and several contract, they may be all

sued in one action; or one may be sued alone, and can not plead the non-joinder of others in abatement; and so far is the doctrine of several liability carried that the defendants, where more than one are sued in the same action, may sever in their pleas, and the jury may find several verdicts, and on several verdicts of guilty may assess different sums as damages." (Lovejoy *vs.* Murray, 70 U. S., 129.)

23. PLEADING AND PRACTICE: OBJECTION TO THE ADMISSION OF A RECORD AS AN ESTOPPEL.—It is not always a conclusive objection to the admissibility of a record as an estoppel or as a bar, that the parties to the former action included some who were not joined in the second action, or vice versa.

24. APPEAL: PROVINCE OF THE APPELLATE COURT: DUTY OF COUNSEL ON APPEAL.—It is not a part of the duty of an appellate court to search out formal or even substantial procedural defects in the proceedings had in the court below to which its attention is not directed in the bill of exceptions, in the printed or written briefs, or in oral argument on appeal. That is the duty of counsel.

25. ID.: ID.: EFFECT TO BE GIVEN TO PRIOR ADJUDICATION.—The same final and conclusive effect should be given to a prior adjudication wherever and whenever it is set up, whether that be done by a plea or in the course of the evidence, or by express or implied stipulation or agreement of counsel.

26. VACATION OF JUDGMENTS.—In the absence of statutory provisions expressly extending or limiting the time within which the courts in these Islands may vacate judgments and grant new trials, or enter new judgments on the ground of error in fact or of law into which the court may be of opinion that it has fallen, these courts have no power thus to vacate judgments after they have become final in the sense that the party in whose favor they are rendered is entitled as of right to have execution thereon. But prior thereto the courts have plenary control over the proceedings, including the judgment, and in the exercise of a sound judicial discretion may take such proper action in this regard as truth and justice require. (Arnedo *vs.* Liongson, 18 Phil. Rep., 269.)

27. INTERLOCUTORY JURISDICTION OF A VACATION JUSTICE OF THE SUPREME COURT.—A vacation justice of the Supreme Court of the Philippine Islands is vested with interlocutory jurisdiction to suspend the execution of orders of this court not final in their nature, pending the further action of the court.

28. PLEADING AND PRACTICE: INEFFECTIVE PLEADINGS: DEMURRER.—Neither legal conclusions, nor conclusions or inference of facts from facts not stated, nor incorrect inferences or conclusions

from facts stated, being admitted by demurrer to complaint, conclusions of this nature in no wise aid the pleading. The ultimate facts upon which such conclusions rest must be alleged though merely probative or evidential facts may be and should be omitted.

Appeal from a Judgment of the Court of First Instance of Manila. Del Rosario, J.

The facts are stated in the opinion of the court.

William Tutherly and Wm. J. Rhode, for appellants.
W. A. Kincaid and Thomas L. Hartigan, for appellee.

CARSON, *J.*:

This is an appeal from a judgment of the Court of First Instance of Manila sustaining a demurrer to the complaint filed in this action on the ground that the facts stated therein do not constitute a cause of action.

A copy of the complaint, omitting the voluminous exhibits thereto attached, is set out in full in the margin, and for convenience of reference will be identified as marginal note A.[1]

---

[1] Marginal note A:

United States of America. Philippine Islands. In the Court of First Instance of Manila.

No. 8769.

EMILIA ALZUA and IGNACIO ARNALOT *vs.* E. F. JOHNSON.

[Plaintiffs' translation of the complaint, filed with the brief.]

Now come the plaintiffs and for cause of action against the defendant, allege:

1. That the plaintiffs are husband and wife and residents of Manila; that the defendant is a resident of Manila, and at all times herein mentioned was a justice of the Supreme Court of the Philippine Islands.

The complaint charges the defendant, an associate justice of the Supreme Court of the Philippine Islands, with corruption and misconduct in office of the gravest character. The damages, which plaintiff Alzua seeks to recover in

---

2. That on September 7, 1905, the plaintiff Alzua obtained judgment in cause No. 3274 in the Court of First Instance of Manila against Visitacion Martinez y Moreno, widow of Soler, and Joaquin Riu y Planas, in the sum of P14,100, which judgment was therein declared to be a first lien upon all the business of said Martinez and Riu in the Philippine Islands, and especially upon "The Sport" and "The Jockey," two stores in Manila owned and operated by said Martinez and Riu; all of which more specifically appears from the appended copy of said judgment marked "Exhibit A," which is made a part of this complaint. That by a stipulation signed by all the parties on September 22, 1905, the amount of this judgment was changed to P12,700 with interest and costs.

3. That thereafter execution was issued on said judgment and placed in the hands of the sheriff of Manila, who in pursuance thereto on or about October 13, 1905, levied upon the merchandise constituting the stock of The Sport aforesaid.

4. That thereafter and on said October 13, 1905, Manuel and Federico Soler, sons of said Martinez, pursuant to section 451 of the Code of Civil Procedure, made demand on said sheriff that he dismiss said levy *and deliver the property to the said Solers*, alleging under oath that they were *the owners as partners of the entire stock of The Sport* so levied on, *and as partners were entitled to the absolute and complete possession thereof;* that in said demand the said Solers do not allege or claim to be creditors, preferred or otherwise, of The Sport, or of said Martinez and Riu; all of which more specifically appears from the appended copy of said sworn claim marked "Exhibit B," which is made a part of this complaint.

5. That thereafter and on October 14, 1905, upon demand of the sheriff under said section 451 *for a bond of indemnity against the claim of the said Solers as owners and partners*, the plaintiff Alzua *executed and delivered a bond to the sheriff, which bond was duly accepted by the sheriff as such indemnity;* all of which more specifically appears from the appended copy of said indemnity bond marked "Exhibit C," which is made a part of this complaint. Thereupon the sheriff refused to release said levy in compliance with the demand of said Solers, pursuant to said section 451, and proceeded to advertise and sell The Sport to satisfy the judgment in cause No. 3274.

6. That thereupon and on said October 14, 1905, Manuel and Federico Soler brought suit No. 4017 in the Court of First Instance of

this section, are alleged to have resulted from the entry by this court of an alleged erroneous judgment in a former action to which Alzua was a party defendant. The error which it is alleged was committed by the court in entering

---

Manila against said sheriff and said Alzua, alleging as before that said Solers were *owners as partners of The Sport and therefore entitled to the possession thereof*, and praying:

(*a*) That said sheriff and said Alzua be enjoined from making levy thereon and from continuing the levy already made.

(*b*) Judgment for damages in the sum of P500 against said sheriff and said Alzua *for interfering with said owners in the possession of said store*.

(*c*) Costs.

7. That thereafter and on November 20, 1905, the said court rendered decision in favor of said sheriff and said Alzua, and dismissed cause No. 4017; whereupon said Solers appealed from this decision to the Supreme Court of the Philippine Islands.

8. That thereafter and on March 27, 1907, the Supreme Court rendered its decision in cause No. 4017, signed by the Honorable Chief Justice, and Justices Torres, Mapa, Tracey, and the defendant Justice Johnson, as follows:

Decision.—"Without prejudice to stating later on the grounds of this decision, the judgment of the court below is hereby affirmed in all respects, with the costs of this instance against the appellants. And after the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the record will be returned to the court whence it came for execution. It is so ordered."

That said decision was prepared by some justice to the plaintiffs unknown, but plaintiffs are informed and believe, and therefore allege, that it was not prepared by defendant; that on March 30, 1907 [1909], notice of said decision was duly sent to and received by the several parties to said cause, of the following tenor:

"You are hereby notified that on the 27th of March, 1907, a decision rendered by this court in the above-entitled cause was filed in this office, whereby the judgment of the lower court is *affirmed* in all its parts, with costs against the appellants; and after twenty days judgment will be entered according to the tenor of the decision, and ten days thereafter the record will be returned to the court of its origin, to be proceeded with according to law."

That thereafter and on March 31, the term of the Supreme Court closed and the court adjourned for vacation, and held no session between March 27, when said decision was rendered, and July 1, 1907.

that judgment, is attributed to the alleged false and misleading statement of the facts of the case which is set out in the written opinion upon which the judgment of the court was based. The complaint specifically charges the defend-

---

9. That on or about April 8, 1907, after the close of the term in which said decision was rendered and while said court stood adjourned the defendant, without consulting the other justices of said court, struck out with pen and ink upon the official records in said decision the word "affirmed," and wrote in place thereof the word "reversed;" that on April 10, 1907, notice of the following tenor was sent to and received by the several parties to said cause:

"You are hereby notified that on the 27th of March, 1907, a decision rendered by this court in the above-entitled cause was filed in this office, whereby the judgment of the lower court is *reversed* in all its parts, with costs against the appellants; and after twenty days judgment will be entered according to the tenor of the decision, and ten days thereafter the record will be returned to the court of its origin, to be proceeded with according to law."

That thereafter and while said court stood adjourned, defendant personally directed the clerk not to enter judgment or to return the record to the lower court for execution, and by reason of such direction the clerk did not enter judgment nor return the record as ordered in said decision [of March 27]; that judgment was not entered nor was the record returned to the court below until about July 29, 1907, and the judgment then returned was in accordance with the text of the decision as changed by defendant *reversing* instead of *affirming* the judgment of the court below.

That by the above acts defendant attempted to reverse the judgment and to defeat the mandate of the Supreme Court, and in effect did reverse said judgment and defeat said mandate; that defendant had neither legal right nor authority to perform said acts, and performed the same wrongfully and with intent to injure the plaintiff Alzua.

10. That having performed the acts above stated, defendant prepared another document purporting to be a different decision of cause No. 4017, which purported decision was thereafter signed by five justices of said court including the defendant, and filed in said cause on September 14, 1907; all of which more specifically appears from the appended copy of said purported decision marked "Exhibit D," which is made a part of this complaint. That in said purported decision defendant wrongfully and with intent to injure the said Alzua, set forth the following false statements of fact:

ant, the writer of that opinion, with having willfully, maliciously, and in bad faith, perverted and misstated the facts set out therein for the purpose of deceiving the other members of the court to whom the opinion was submitted for sig-

---

"*(a)* That said Solers were *creditors* and *preferred creditors* of Martinez and Riu; defendant well knowing from the record:

"(1) That said Solers alleged that they were *owners as partners* of The Sport, and as such were *entitled to possession of said property and to damages for the interruption of said possession* by the levy in cause No. 3274 to which they were not parties.

"(2) That they did not allege to be *creditors, preferred or otherwise*, or entitled to be paid out of the funds received from said levy and sale.

"(3) That Martinez and Riu were not parties to cause No. 4017, and could not be bound by the decision in said cause.

"*(b)* That the judgment of the lower court dismissing the complaint and dissolving the temporary injunction *is hereby reversed*, and the cause is remanded to the lower court *with direction to take action not inconsistent herewith*, * * * *without any finding as to costs*; defendant well knowing that such finding was a direct violation of said decision of March 27."

11. That no final decision or judgment has been rendered in cause No. 4017; and that said cause has been dormant in the Court of First Instance since its return from the Supreme Court, and the same is now pending and undisposed of in said court.

12. That on August 22, 1907, and prior to the purported decision of September 14, said Manuel and Federico Soler brought suit No. 5719 in the Court of First Instance of Manila against the sheriff, the acting sheriff, and Emilia Alzua, her husband Ignacio Arnalot, Juan Garcia, Juan Gonzalez Ruiz, and Celedonia Baylon (the five last named being indemnitors on the bond given to the sheriff as set forth in par. 6) to which suit Visitacion Martinez and Joaquin Riu were made parties before the trial thereof, alleging for the time that the Solers had a preferred credit of 9,868.29 pesos Mex. (of the market value of P10,016.31 P. C.) in the capital which Martinez and Riu had invested in The Sport, and praying judgment against all the above defendants.

13. That thereafter and on November 19, 1907, the Court of First Instance rendered its decision dismissing the action as to all the defendants except said Martinez, who had by formal answer confessed her liability, and giving judgment *solely against said Martinez in the sum of P10,016.31 with interest thereon from August 22, 1907*; all of which more specifically appears from the appended copy of said decision marked "Exhibit E," which is made a part of this complaint.

nature; and it is further charged, that this was but one of a series of malicious and wrongful acts whereby the defendant succeeded in deceiving his associates, and induced them to sign the order directing the entry of the alleged

---

14. That thereafter said Solers appealed from this decision to the Supreme Court of the Philippine Islands, and said cause was set for hearing on —— —, 1909. That there were present and sitting in said court the Honorable Chief Justice and Justices Torres, Carson, Moreland, Elliott, and the defendant; that none of the parties appeared at said hearing and the case was submitted without argument.

15. That thereafter, without having discussed or consulted with the justices to whom the cause was submitted as aforesaid regarding the decision thereof, defendant prepared a decision, a copy of which is hereto appended marked "Exhibit F," and made a part of this complaint; that therein defendant wrongfuly and with intent to injure the plaintiff Alzua, set forth the following false statements of fact:

"(*a*) That in the demand on the sheriff that he dismiss the levy in cause No. 3274, the guardian *ad litem* of said Solers alleges that their claim was a *preferred claim;* defendant well knowing from the record that in said demand they alleged under oath and claimed *as owners and partners.*

"(*b*) That the Supreme Court had decided in cause No. 4017 *that the Solers had a credit preferred to that of the plaintiff Alzua against Martinez and Riu for P9,868.29;* defendant well knowing from the record that the decision in cause No. 4017 had not been pleaded or introduced in evidence in said cause 5719.

"(*c*) That cause 5719 was brought against said Alzua and her bondsmen upon the bond executed and delivered by them to the sheriff, for the purpose of recovering the sum of P9,868.29, together with damages, interest, and costs amounting to P11,068; defendant well knowing from the record that the sheriff, the acting sheriff, Visitacion Martinez and Joaquin Riu were also defendants in said cause, and that the only sum at issue was 9,868.29 pesos Mexican currency, and that no damages had been proved.

"(*d*) That said cause No. 5719 was instituted *on the first day of October, 1907, and after said decision of the Supreme Court dated September 14, 1907;* defendant well knowing from the record that said suit was instituted and filed *before said decision, to wit on August 22, 1907.*

"(*e*) That the record in cause No. 5719 shows that said indemnity bond to the sheriff was given *after* the issuance of the injunction by

erroneous judgment. As a necessary corollary to the surmises, conjectures, and specific charges of wrongdoing set out in the complaint, if these surmises, conjectures, and specific charges are well founded, the four members of this

---

the lower court in cause No. 4017; defendant well knowing that the record in cause 5719 does not so show.

"(*f*) That the defendants Garcia, Ruiz and Baylon as sureties, and Alzua as principal, had obligated themselves by said bond *to respond to the plaintiffs* (the said Solers) for the amount of the claim which said Solers had against the partnership of Martinez and Riu; defendant well knowing that said bond was given to the sheriff for his indemnity, and that said Solers were not parties to said bond."

16. That defendant wrongfully and with intent to injure the plaintiff Alzua, neglected to discuss or consider the actual questions involved in cause No. 5719 or the evidence relating thereto, and perverted and misrepresented the facts as aforesaid; that having prepared and signed this decision, defendant obtained the signatures of the Honorable Chief Justice and Justices Torres, Carson, and Moreland, upon defendant's representation that the facts therein stated were true, and that a fair and impartial statement of the case was therein set forth; defendant well knowing that said representation was not true. Plaintiffs further allege that said decision was never presented to or signed by Justice Elliott, who was present and sitting at the hearing of said cause, and he was not in any manner informed of the same.

17. That defendant omitted the names of Martinez and Riu from the caption of said decision, and thereafter personally directed the clerk of the Supreme Court to enter judgment solely against Alzua, Garcia, Ruiz, and Baylon, and not to include Martinez and Riu in said judgment; [defendant well knowing that Martinez and Riu were defendants of record, and that the lower court had rendered judgment against one of them, to wit, the said Martinez. That defendant had neither legal right nor authority to perform the above acts], and performed them wrongfully and with intent to injure the said Alzua.

18. That thereafter and on February 8, 1910, pursuant to this decision and the personal direction of defendant, judgment was entered against Alzua, Garcia, Ruiz, and Baylon for the sum of P11,068 with interest thereon from October 14, 1905; all of which more specifically appears in the appended copy of said judgment marked "Exhibit C," which is made a part of this complaint.

19. That by this decision prepared by defendant and the judgment entered pursuant to his instructions, the decision of the lower court was wholly reversed even as to said Martinez, who had confessed her

court whose signatures are attached to that opinion together with that of the defendant, must have signed the opinion with no personal knowledge of the contents of the record

---

liability; and Alzua and the other indemnitors to the sheriff were held liable to said Solers, for the alleged reason that the said Solers were *creditors* of Martinez and Riu, and *preferred* to said Alzua; that although Martinez and Riu were never sued by said Solers to establish said liability except in cause No. 5719, by said decision and judgment Martinez and Riu were absolved from the liability claimed by said Solers, and the pretended liability of Martinez and Riu is used only as a specious basis for rendering judgment against the indemnitors to the sheriff.

20. That defendant performed each and every act hereinbefore alleged in relation to causes Nos. 4017 and 5719 wrongfully and with intent to injure the plaintiff Alzua, and with full knowledge of the facts herein set forth. Plaintiffs further allege that such knowledge appears from an inspection of the decisions in causes Nos. 4017 and 5719.

21. That upon execution issued, plaintiffs in this action paid the judgment of P12,000 in cause No. 5719 about March 1, 1910; that in order to satisfy this judgment they were compelled to sell at great sacrifice all the property they had, consisting of an interest in the Hotel Francia, located on Plaza Goiti in Manila, of the actual value of P40,000; that since March 1, 1910, the profits from the interest then sold have amounted to P25,000.

22. That by reason of the acts of defendant hereinbefore set forth, plaintiffs have been deprived of their property without due process of law and for no lawful reason whatsoever, in violation of section 5 of the Act of Congress of July 1, 1902, known as The Philippine Bill, and of the fifth amendment to the Constitution of the United States; that they have suffered actual damages to the amount of P40,000, the value of said property, and special damages to the amount of P25,000 which they would have realized as income from said property; and that they are entitled to punitive damages in the sum of P50,000 by reason of the aforesaid acts of the defendant.

Wherefore plaintiffs pray judgment against defendant as follows: For actual and special damages in the sum of P65,000; for punitive damages in the sum of P50,000; for the costs of this action; and for such further relief as may be just.

EMILIA ALZÚA.
Y. ARNALOT.

WILLIAM TUTHERLY,
WM. J. RHODE,
Attorneys for Plaintiffs.

submitted to them for adjudication, and without having read the briefs of counsel, relying wholly upon the alleged false and misleading statement of the facts prepared by the defendant as the basis for the judgment which it is alleged was erroneously entered by the court.

We need hardly say that in sitting in judgment upon a complaint which thus boldly attacks the good name and fame of one of our associates, and which indirectly reflects upon the credit and reputation of the whole court, we keenly recognize the delicacy of our position; and that had we any discretion so to do, we would decline to take part in the discussion and decision of the questions submitted on this appeal. But our duty, as members of the court of last resort in these Islands, demands that in this case, as in all other cases duly submitted to us for adjudication, we proceed, in the language of our solemn oath of office, to "administer justice without respect to persons, and with equal right to the rich and the poor" and that we "faithfully and impartially discharge and perform all the duties incumbent upon us, as members of this court, according to the best of our ability and understanding, agreeably to the laws of the Philippine Islands."

We are, however, in some sort relieved of the extreme embarrassment to which we might otherwise be subjected by the exceptional character of the allegations and charges set out in the complaint:

(1) By the knowledge that our action herein is subject to review by a higher court;

(2) By the fact that counsel, upon submitting the case on appeal, formally advised the court that it was submitted for judgment without any objection to the participation therein of any of the members of the court whose signatures are hereto attached; and

(3) Because the case is before us in such form that we can fully and completely dispose of all the issues involved, without being called upon to decide any difficult, doubtful or uncertain questions of fact; and because, without any

doubts or misgivings as to the correctness of our conclusions we are unanimously of opinion not only that the plaintiff has no legal right to maintain this action, even if the truth of all her charges of official misconduct and wrongdoing on the part of the defendant be admitted; but that an examination of the complaint, together with the exhibits incorporated therein, clearly discloses that even if plaintiff could be permitted to maintain this action, she has no just claim against the defendant; that she did not as alleged, suffer the damages complained of, or any damages whatever; that the material and relevant facts well pleaded in the complaint do not sustain or justify the surmises, conjectures, inferential allegations and specific charges of misconduct on the part of the defendant contained therein: that on the contrary the complaint, read together with the exhibits and court files which are incorporated therein, clearly discloses facts which justify us in holding that the defendant was not guilty of any misconduct or wrongdoing in connection with the entry of the judgment in question or the litigation in the course of which it was rendered; that his intervention in the adjudication of the causes mentioned in the complaint was had in the due and proper performance of his duty; that a failure or neglect on his part to do each and all of the acts complained of, substantially in manner and form as he did in fact do them, would have rendered him liable to a well-founded charge of dereliction in the performance of the duties of his office as an associate justice of the Supreme Court of the Philippine Islands; and, finally, that the two separate final judgments entered by this court in the causes referred to in the complaint, which are alleged to have been erroneously entered at the instigation of the defendant, were justly and lawfully entered, and adjudicated the issues involved in each of them "according to the very right of the cause" and "agreeably to the laws of the Philippine Islands."

It is hardly possible that any one can be better informed than are we as to the truth in regard to the extended litiga-

tion in this court which culminated in the alleged erroneous judgment. Certainly no one can be in better position than are the members of this court to interpret correctly the various incidents of that litigation as they are disclosed by our own records. Nevertheless, this case having been submitted to us for a review of the action of the court below in sustaining a demurrer to the complaint, and that demurrer admitting, as it does, the truth of all the material and relevant facts which are well pleaded; we have taken scrupulous care to decide the appeal thus submitted, not upon any matter of our own knowledge which could not have been known to the court below, but strictly upon the facts disclosed by the complaint, aided only by those additional facts of which the court below might and should have taken judicial notice.

Counsel for Alzua, the real plaintiff and appellant in this action, and who will be referred to hereinafter as the "plaintiff," contend that the judgment of the lower court sustaining the demurrer should be reversed because, as counsel contend, if the truth of the allegations contained in the complaint be admitted, it appears that she suffered damages, actual and special, amounting to some P65,000 as the result of the entry of an erroneous judgment against her for the sum of P12,000 by the Supreme Court of the Philippine Islands in a certain action to which she was a party defendant, to satisfy which she was compelled, as she alleges, to sell certain valuable real estate at a great sacrifice; and because, as counsel contend, this erroneous judgment was rendered by the Supreme Court of the Philippine Islands as a result of the unlawful and malicious intervention of the defendant in the various proceedings had in this court leading up to its entry. The alleged unlawful acts of the defendant to which the complaint directs the attention of the court consist of an alleged misstatement and perversion of the facts developed by the record which is set out in his written opinion in the case wherein the alleged erroneous judgment was entered, and a like misstatement of the facts

developed in the record which is set out in his written opinion in a prior case intimately connected therewith; also the striking out with pen and ink by the defendant of the word "affirmed" and the substitution therefor of the word "revoked" in the original order directing entry of judgment in the earlier case, and the issuance by him, at the same time, of directions to the clerk of the court to suspend the execution of the order thus amended, until the further order of the court. The complaint charges that the intervention by the defendant in these proceedings was actuated throughout by an intent to injure the plaintiff in this action; that the statement of facts set out in the opinion written by him, upon which the judgments in those cases were entered, were false, and made by the defendant knowing them to be false; that the amendment made to the order directing the entry of judgment in the first cause by striking out the word "affirmed" and substituting therefor the word "revoked," was made by the defendant surreptitiously, unlawfully, without consulting with his associates, and with intent to injure the plaintiff in this action; that it constituted a willful and deliberate falsification of the records of this court by the defendant in this action; and that the defendant, by thus unlawfully and maliciously intervening in the proceedings of the court upon the appeals in the two above-mentioned causes, procured the entry of the erroneous judgment from which sprung the damages complained of by plaintiff in this action. Counsel contend that the truth of these allegations being admitted by the demurrer, judgment should be rendered against the defendant for damages: P40,000 as actual damages, that being the alleged value of the real estate which plaintiff Alzua was compelled to sell in order to satisfy the alleged erroneous judgment against her for P12,000; P25,000 by way of special damages because of the loss of profits from this property of which she was thus deprived from the date of its sale to the date of the institution of this action; and P50,000 by way of punitive damages, which

plaintiff claims, apparently on the ground of the malicious character of the alleged wrong done her by the defendant.

We do not think that these contentions of counsel for appellant are supported by the facts well pleaded in the complaint; and, on the contrary, we are unanimously of opinion, and so hold, that the demurrer to the complaint was properly sustained by the court below. Our conclusions are based on several grounds, each of which is sufficient in itself to sustain the action of the trial judge. We shall, therefore, set out the various grounds on which our judgment rests very summarily in the first place; and, thereafter, we shall examine each of them in greater detail and under separate heads.

First. We hold that, admitting the truth of all the allegations set out in the complaint, and of all the surmises, conjectures, inferential allegations, and specific charges of official misconduct and wrongdoing, and of malice, bad faith, and intent to injure the plaintiff contained therein, the defendant, nevertheless, is not liable to respond in a civil action for the damages which it is alleged were occasioned thereby.

Second. We hold that the complaint itself, read together with the exhibits and court records which are incorporated therein, clearly discloses that the judgment, out of which plaintiff claims that the alleged damages sprung, was not erroneously entered as alleged in the complaint, and therefore that the plaintiff has no claim for damages against the defendant; in other words, that the facts set out in the complaint do not constitute a cause of action.

Third. We hold that the complaint itself, read together with the exhibits and court records which are incorporated therein, sets forth facts which clearly demonstrate that the surmises, conjectures, inferential allegations, and specific charges of official misconduct and wrongdoing directed against the defendant in the complaint are not well founded. We hold also, in this connection, that the allegations in the complaint of malice, bad faith, and intent on the part of the defendant to injure the plaintiff are not sustained, and

on the contrary are directly controverted, by the specific averments of fact set out in the complaint when read together with the court records specifically referred to therein. We conclude, therefore, that proof of the material and relevant facts well pleaded in the complaint would not sustain the charges of bad faith, malice, and wicked intent set out therein, which on plaintiff's own theory of the case must be shown to exist before she can establish a cause of action; or in other words, that the facts set out in the complaint do not constitute a cause of action.

I.

In support of the proposition that defendant is not liable to respond in a civil action for the damages alleged in the complaint, we might, perhaps, rely upon the reasoning of the concurring opinion in the case of Forbes *vs.* Chuoco Tiaco (16 Phil. Rep., 534), wherein the writer undertakes to establish that "whenever and wherever a judge of a court of superior jurisdiction exercises judicial functions, he will not be personally liable in civil damages for the result of his actions," and that "the test of judicial liability is not jurisdiction, but such liability depends wholly upon the nature of the question which is being determined when the error complained of is committed by the court. If such question is one the determination of which requires the exercise of judicial functions, the judge is not liable, even though there is in reality an absolute failure of jurisdiction over the subject matter." Applying this test to the allegations contained in the complaint, there could be no question as to the nonliability of the defendant to respond in this action for the alleged damages. We shall not, however, rest our decision in this case upon the doctrine thus enunciated, nor shall we in anywise rely upon the reasoning or the conclusions contained in the concurring opinion in the Forbes case. The doctrine as to nonliability of judges therein set forth has not been uniformly and unquestioningly accepted by all the courts which have been called upon to consider the principles involved;

and indeed, the writer of that opinion carefully directs attention to the fact that the doctrine as to nonliability of judges therein announced is, if not a step in advance of the doctrine generally recognized in English and American courts, at least a statement of the doctrine in a form which has not yet received universal judicial recognition and acceptance. We prefer, therefore, since the facts in this case permit us to do so, to rest our conclusions upon a much narrower and more restricted proposition touching the liability of judicial officers, which has never been seriously questioned by any court of last resort in England or the United States; merely observing in passing, that the rule of judicial liability on which we propose to rely is not in conflict with the doctrine laid down in the concurring opinion in the Forbes case, but is included therein, so that the grounds of public policy on which the broader doctrine rests necessarily sustain the more restricted statement of the rule upon which we propose to rely.

We hold that under the law as it now exists in these Islands "judges of superior and general jurisdiction are not liable to respond in civil action for damages for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction."

The grounds of public policy upon which this proposition rests have been held by the very highest authority to protect judges, even when acting in excess of jurisdiction; and with much reason many authorities have held that upon the same grounds of public policy the protecting mantle of this rule should be thrown around judges of inferior jurisdiction as well as those of superior jurisdiction. So the writer of the concurring opinion in the Forbes case, *supra*, in carrying the reasoning on which this rule rests to what he conceives to be its logical conclusion, lays down the still broader rule above cited. But for the purposes of this decision we desire to limit ourselves to the restricted statement of the rule as just laid down, because as we believe and will undertake hereinafter to establish, there can be no question that whatever may have been the motives of the defendant,

the allegations of the complaint disclose that in doing each and all of the acts complained of, he was acting "as a judge," in the exercise of his judicial functions, and that in doing these acts he was clearly and undoubtedly acting within his legal powers and jurisdiction.

This restricted statement of the rule of judicial liability in civil actions is universally asserted by the text-writers, and is a settled principle of law as applied by the courts of England and the United States. It needs no citation of authorities to sustain it, and we shall not burden the body of this opinion with the arguments which are advanced in its support. But in the margin (Notes C and D, p. 523 [*infra.*, pp. 35-40]) will be found a full statement of the grounds of public policy on which it rests, quoted from Mr. Cooley's work on Torts; and an extensive citation from the opinion of the Supreme Court of the United States written by Chief Justice Field in the case of Bradley *vs.* Fisher,[1] in which the rule is discussed at length.

There can be no need of argument to demonstrate that the defendant, an associate justice of the Supreme Court of the Philippine Islands, was acting within the limits of his legal powers and jurisdiction in taking part in the adjudication of the appeals in the two cases referred to in the complaint; in discussing the issues involved therein with his associates; in preparing the written opinions therein and submitting them to the other members of the court for signature; and in joining with them in the issuance of the necessary orders for the entry of the final judgments rendered by the court. The only question, therefore, as to the legal powers and jurisdiction of the defendant to do the various acts mentioned in the complaint which need be considered, arises in connection with his action in amending the order directing the entry of judgment in the earlier case referred to in the complaint, and in giving directions to the clerk of the court not to execute the original order nor the order as amended until the further order of the court. We

[1] 80 U. S., 335.

hold that if it be admitted that the court itself had legal powers and jurisdiction thus to amend its own order and to suspend the execution thereof until the further order of the court, then the facts alleged in the complaint conclusively establish the legal powers and jurisdiction of the defendant so to do. The complaint expressly alleges that all of these acts were done during the judicial vacation of the court in the year 1907; and furthermore, it sets forth facts which fully sustain the averment contained therein that these acts were done on or about the 8th day of April, 1907. But at that time the defendant was acting as vacation justice, designated to remain on duty during the vacation period of the year 1907, with full legal powers and jurisdiction to do each and all of these acts if the court itself would have had such powers and jurisdiction to do them when in regular session. True the complaint studiously refrains from mentioning the fact that at the time when these acts were done the defendant was on duty as vacation justice of the court, but we hold that this court as well as the court below may and should take judicial notice of that fact, under the provisions of section 121 of the Code of Civil Procedure; and an extract from the official copy of the administrative order designating him for that duty, which was furnished to all the courts of the Islands, will be found in marginal note B.[1]

---

[1] Marginal note B:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.
DEPARTMENT OF FINANCE AND JUSTICE.
MANILA.

By virtue of the provisions of Acts Eleven hundred and fifty-three and Eight hundred and sixty-seven, and according to the recommendations duly made of the Honorable the Chief Justice of the Supreme Court, I hereby designate the following-named justices and judges to remain on duty during the vacation period of the year nineteen hundred and seven.

For the Supreme Court. Mr. Justice E. Finley Johnson.

* * * * * * *

Dated, Manila, March 1, 1907.

JAMES F. SMITH.
Governor-General,
Acting Secretary of Finance and Justice.

That the court itself had plenary control over the order in question, and complete legal powers and jurisdiction to amend it, and to issue orders to the clerk directing suspension of its execution until further orders, will be shown further on in this opinion; and indeed this proposition is so apparent that it is hardly necessary to set forth the reasoning on which it rests. That the defendant, as vacation justice of the court, had full legal powers and jurisdiction to do likewise, becomes very clear from a reading of the provisions of subsections (*c*) and (*d*) of section 5 of Act No. 136 as amended by section 1 of Act No. 867, set out in marginal note E[2], which confer and define the legal powers and juris-

[2] Marginal note E:

Subsections (*c*) and (*d*) of section 5 of Act Numbered 136, as amended by section 1 of Act Numbered 867:

"(*c*) On or before the first of December of each year, the Chief Justice of the Supreme Court shall recommend to the Governor the names of the judges who should be assigned to duty as above during the court vacation. In making his recommendation the Chief Justice shall select the five judges with a view to the convenient exercise of interlocutory jurisdiction by each of the judges selected in two neighboring districts, so that for interlocutory purposes there may be a judge available in every three districts. The Civil Governor shall, on or before the first of January of each year, issue an executive order naming the judges of the Supreme Court and of all Courts of First Instance who shall remain on duty, subject to call for the purposes of interlocutory jurisdiction, throughout the Islands. In this executive order the Governor shall assign to the regular judges of the Courts of First Instance the districts over which, in addition to their own districts, they shall during vacation exercise interlocutory jurisdiction. The assignment of judges for vacation duty shall be so arranged that no judge shall be assigned for vacation duty more than once in three years. The executive order herein required may be modified from time to time upon the recommendation of the Chief Justice and adjusted to emergencies and newly arising conditions.

"(*d*) The interlocutory jurisdiction referred to in the previous sections of this Act shall be held to include the hearing of all motions for appointment of receiver, for temporary injunctions, and for all other orders of the court which are not final in their character and do not involve a decision of the case pending upon its merits. The interlocutory jurisdiction shall also include the hearing of petitions for the writ of *habeas corpus*, applications for bail, the holding of preliminary examinations, and such orders in criminal causes as do not involve a final sentence of conviction or judgment of acquittal."

diction of Justices of the Supreme Court of the Philippine Islands designated for duty during judicial vacations. Under the rulings and practice of this court in construing these provisions of the law, it cannot be doubted that the interlocutory jurisdiction thus conferred by law upon vacation justices of this court clothed the defendant with full legal powers and jurisdiction to make the provisional amendment of the order directing the entry of the judgment, and to direct the suspension of its execution until the further orders of the court, these acts being essentially interlocutory in their nature, and, in the very language of the statute, "not final in their character" and not involving "a decision of the case pending on the merits."

The allegations of the complaint setting forth that all the acts complained of therein, were done by the defendant, in the exercise of his judicial functions, as a justice of the Supreme Court of the Philippine Islands, a court of superior and general jurisdiction; and it clearly appearing from the complaint, that in doing each and all of the acts complained of, he was acting within the limits of his legal powers and jurisdiction; it follows, as of course, that he cannot be held to respond in this action for the damages which it is alleged were occasioned thereby, since "judges of superior and general jurisdiction are not liable to respond in civil actions for damages for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction."

But counsel for appellants, while they do not deny that the rule of law on which we rely is universally recognized and applied in the courts of England and the United States, insist that it is not a correct statement of the law in force in these Islands. As we understand their contention, it is that this rule is a rule of the common law of England, and as such not in force in the Philippines; and that the doctrine as to the liability of judicial officers in civil actions is to be derived from the Spanish substantive law in force in these Islands at the time of their transfer to American sovereignty.

modified only by the provisions of section 9 of the Code of Civil Procedure.

To this we answer that while it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, "nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law" (U. S. *vs.* Cuna, 12 Phil. Rep., 241); nevertheless many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they are derived, and that they breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty recourse must be had to the rules, principles, and doctrines of the common law under whose protecting ægis the prototypes of these institutions had their birth.

In the case of Kepner *vs.* United States (195 U. S., 100, 11 Phil. Rep., 669), the Supreme Court of the United States declared that:

> "The expressed declarations of the President in Military Order, No. 58, of April 23, 1900, and in the Act of July 1, 1902, establishing a civil government in the Philippine Islands, both adopting with little alteration the provisions of the Bill of Rights, show that it was intended to carry to the Philippine Islands those principles of our Government which the President declared to be established as rules of law for the maintenance of individual freedom; and those expressions were used in the sense which has been placed upon them in construing the instrument from which they were taken.
>
> "It is a well-settled rule of construction that lan-

> guage used in a statute which has a settled and well-known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body.
>
> "It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling.
>
> "In ascertaining the meaning of a phrase in the Constitution taken from the Bill of Rights, it must be construed with reference to the common law from which it was taken."

So in Serra *vs.* Mortiga (204 U. S., 470, 11 Phil. Rep., 762), the same court held that:

> "The guaranties extended by Congress to the Philippine Islands are to be interpreted as meaning what the like provisions meant when Congress made them applicable to those Islands."

And it is safe to say that in every volume of the Philippine Reports, numbers of cases might be cited wherein recourse has been had to the rules, principles, and doctrines of the common law in ascertaining the true meaning and scope of the legislation enacted in and for the Philippine Islands since they passed under American sovereignty.

Among the earliest measures of the Philippine Commission, after the establishment of Civil Government under American sovereignty, was the enactment on June 11, 1901, of Act No. 136, "An Act providing for the organization of courts in the Philippine Islands." This Act in express terms abolished the then existing *Audiencia* or Supreme Court and Courts of First Instance, and substituted in their place the courts provided therein. It sets out in general terms the jurisdiction, duties, privileges, and powers of the new courts and their judges. The majority of the members of the body which enacted it were able American lawyers. The spirit with which it is informed, and indeed its very language and terminology would be unintelligible without

some knowledge of the judicial systems of England and the United States. Its manifest purpose and object was to replace the old judicial system, with its incidents and traditions drawn from Spanish sources, with a new system modeled in all its essential characteristics upon the judicial systems of the United States. It cannot be doubted, therefore, that any incident of the former system which conflicts with the essential principles and settled doctrines on which the new system rests, must be held to be abrogated by the law organizing the new system.

The exemption of judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions is a principle essentially inherent in the various judicial systems upon which the system organized under Act No. 136 is modeled. The grounds of public policy and the reasoning upon which the doctrine is based are not less forceful and imperative in these Islands than in the countries from which the new judicial system was borrowed; and an examination of the reasons assigned by the Supreme Court of the United States and by Mr. Cooley in his work on Torts for the universal recognition of the rule in the United States, as set out in the margin (Notes C and D[1]) leaves no room for doubt that

---

[1] Marginal note C:

The reasons generally assigned for the immunity of a judge from civil liability from damages resulting from his wrongful acts while in the discharge of the duties of his office, are thus stated in Cooley on Torts (2d ed., pp. 475-478):

"1. The necessary result of the liability would be to occupy the judge's time and mind with the defense of his own interests, when he should be giving them up wholly to his public duties, thereby defeating, to some extent, the very purpose for which his office was created.

"2. The effect of putting the judge on his defense as a wrongdoer necessarily is to lower the estimation in which his office is held by the public, and any adjudication against him lessens the weight of his subsequent decisions. This of itself is a serious evil, affecting the whole community; for the confidence and respect of the people for the government will always repose most securely on the judicial authority when it is esteemed, and must always be unstable and unre-

a failure to recognize it as an incident to the new judicial system would materially impair its usefulness, and tend very strongly to defeat the ends for which it was established. Indeed, upon the authority of the reasoning in the case of

---

liable when this is not respected. If the judiciary is unjustly assailed in the public press, the wise judge refuses to put himself in position of defendant by responding, but he leaves the tempest to rage until an awakened public sentiment silences his detractors. But if he is forced upon his defense, as was well said in an early case, it 'would tend to the scandal and subversion of all justice, and those who are most sincere would not be free from continual calumniations.'

"3. The civil responsibility of the judge would often be an incentive to dishonest instead of honest judgments, and would invite him to consult public opinion and public prejudices, when he ought to be wholly above and uninfluenced by them. As every suit against him would be to some extent an appeal to popular feeling, a judge, caring specially for his own protection, rather than for the cause of justice, could not well resist a leaning adverse to the parties against whom the popular passion or prejudice for the time being was running, and he would thus become a persecutor in the cases where he ought to be a protector, and might count with confidence on escaping responsibility in the very cases in which he ought to be punished. Of what avail, for example, could the civil liability of the judge have been to the victims of the brutality of Jeffreys if, while he was at the height of his power and influence and was wreaking his brutal passions upon them amidst the applause of crowded court rooms, these victims had demanded redress against him at the hands of any other court and jury of the realm?

"4. Such civil responsibility would constitute a serious obstruction to justice, in that it would render essential a large increase in the judicial force, not only as it would multiply litigation, but as it would open each case to endless controversy. This of itself would be an incalculable evil. The interest of the public in general rules and in settled order is vastly greater than in any results which only affect individuals; courts are for the general benefit rather than for the individual; and it is more important that their action shall tend to the peace and quiet of society than that, at the expense of order, and after many suits, they shall finally punish an officer with damages for his misconduct. And it is to be borne in mind that if one judge can be tried for his judgment, the one who presides on the trial may also be tried for his, and thus the process may go on until it becomes intolerable.

"5. But where the judge is really deserving of condemnation a

Bradley *vs.* Fisher, it may safely be asserted that an attempt to enforce any rule of law in conflict with this doctrine would be utterly subversive of the system of jurisprudence

---

prosecution at the instance of the State is a much more effectual method of bringing him to account than a private suit. A want of integrity, a failure to apply his judgment to the case before him, a reckless or malicious disposition to delay or defeat justice may exist and be perfectly capable of being shown, and yet not be made so apparent by the facts of any particular case that in a trial confined to those facts he would be condemned. It may require the facts of many cases to establish the fault; it may be necessary to show the official action for years. Where an officer is impeached, the whole official career is or may be gone into; in that case one delinquency after another is perhaps shown—each tends to characterize the other, and the whole will enable the triers to form a just opinion of the official integrity. But in a private suit the party would be confined to the facts of his own case. It is against inflexible rules that one man should be allowed to base his recovery for his own benefit on a wrong done to another; and could it be permitted, the person first wronged, and whose right to redress would be as complete as any, would lose this advantage by the very fact that he stood first in the line of injured persons.

"Whenever, therefore, the State confers judicial powers upon an individual, it confers them with full immunity from private suits. In effect, the State says to the officer that these duties are confided to his judgment; that he is to exercise his judgment fully, freely, and without favor, and he may exercise it without fear; that the duties concern individuals, but they concern more especially the welfare of the State and the peace and happiness of society; that if he shall fail in the faithful discharge of them he shall be called to account as a criminal; but that in order that he may not be annoyed, disturbed, and impeded in the performance of these high functions, a dissatisfied individual shall not be suffered to call in question his official action in a suit for damages. This is what the State, speaking by the mouth of the common law, says to the judicial officer." (Cooley on Torts, 2d ed., pp. 475-478.)

Marginal note D:

Extract from opinion of the Supreme Court of the United States, in Bradley *vs.* Fisher (80 U. S., 335):

"In other words, it sets up that the order for the entry of which the suit is brought was a judicial act, done by the defendant as the presiding justice of a court of general criminal jurisdiction. If such were the character of the act, and the jurisdiction of the court, the

established in these Islands under and by virtue of the authority of the Congress of the United States:

> "For it is a general principle of the highest importance to the proper administration of justice that

---

defendant cannot be subjected to responsibility for it in a civil action, however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff. For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to every one who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. As observed by a distinguished English judge, it would establish the weakness of judicial authority in a degrading responsibility.

"The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well-ordered system of jurisprudence. It has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country.

"It has, as Chancellor Kent observes, 'a deep root in the common law.'

"Nor can this exemption of the judges from civil liability be effected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry. This was adjudged in the case of Floyd and Barker, reported by Coke, in 1608, where it was laid down that the judges of the realm could not be drawn in question for any supposed corruption impeaching the veracity of their records, except before the king himself, and it was observed that if they were required to answer otherwise, it would 'tend to the scandal and subversion of all justice, and those who are the most sincere, would not be free from continual calumniations.'

"The truth of this latter observation is manifest to all persons having much experience with judicial proceedings in the superior courts. Controversies involving not merely great pecuniary interests, but the liberty and character of the parties and, consequently exciting the deepest feelings, are being constantly determined in those courts, in which there is a great conflict in the evidence and great doubt as

a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to every one who might

---

to the law which should govern their decision. It is this class of cases which imposes upon the judge the severest labor, and often create in his mind a painful sense of responsibility. Yet it is precisely in this class of cases that the losing party feels most keenly the decision against him, and most readily accepts anything but the soundness of the decision in explanation of the action of the judge. Just in proportion to the strength of his convictions of the correctness of his own view of the case is he apt to complain of the judgment against him, and from complaints of the judgment to pass to the ascription of improper motives to the judge. When the controversy involves questions affecting large amounts of property or relates to a matter of general public concern, or touches the interests of numerous parties, the disappointment occasioned by an adverse decision often finds vent in imputations of this character, and from the imperfection of human nature this is hardly a subject of wonder. If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. Few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the acts which would be essential to the maintenance of the action.

"If upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party—and that judge perhaps one of an inferior jurisdiction—that he had decided as he did with judicial integrity; and the second judge would be subjected to a similar burden, as he in his turn might also be held amenable by the losing party.

"Some just observations on this head by the late Chief Justice Shaw, will be found in Pratt *vs.* Gardner, and the point here was adjudged in the recent case of Fray *vs.* Blackburn, by the Queen's Bench of England. One of the judges of that bench was sued for a judicial act, and on demurrer one of the objections taken to the declaration was, that it was bad in not alleging malice. Judgment

feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. As observed by a distinguished English judge,

---

on the demurrer having passed for the defendant, the plaintiff applied for leave to amend his declaration by introducing an allegation of malice and corruption; but Mr. Justice Compton replied: 'It is a principle of our law that no action will lie against a judge of one of the superior courts for a judicial act, though it be alleged to have been done maliciously and corruptly; therefore the proposed allegation would not make the declaration good. The public are deeply interested in this rule, which indeed exists for their benefit, and was established in order to secure the independence of the judges, and prevent them being harassed by vexatious actions;' and the leave was refused.

"In this country the judges of the superior courts of record are only responsible to the people, or the authorities constituted by the people, from whom they receive their commissions, for the manner in which they discharge the great trusts of their office. If in the exercise of the powers with which they are clothed as ministers of justice, they act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively, they may be called to an account by impeachment and suspended or removed from office. In some States they may be thus suspended or removed without impeachment, by a vote of the two houses of the legislature.

* * * * * * *

"The exemption of judges of the superior courts of record from liability to civil suit for their judicial acts existing when there is jurisdiction of the subject-matter, though irregularity and error attend the exercise of the jurisdiction, the exemption cannot be affected by any consideration of the motives with which the acts are done. The allegation of malicious or corrupt motives could always be made, and if the motives could be inquired into, judges would be subjected to the same vexatious litigation upon such allegations, whether the motives had or had not any real existence. Against the consequences of their erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must in such cases resort. But for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction, the judges of these courts can only be reached by public prosecution in the form of impeachment, or in such other form as may be specially prescribed."

it would establish the weakness of judicial authority in a degrading responsibility.

"The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well-ordered system of jurisprudence. It has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country. (Bradley *vs.* Fisher, *supra.*)"

We conclude, that if it be true, as asserted by counsel for appellant, that the provisions of Spanish law in force in these Islands prior to American occupation are in conflict with the doctrine of nonliability of judges above set out, such provisions of the old law must be held to have been abrogated by the enactment of Act No. 136 of the Philippine Commission, to at least the extent with which they are in conflict with that doctrine.

But while we hold that since the enactment of Act No. 136 the doctrine as to the liability of judges must be laid down in accordance with principles derived from Anglo-American rather than Spanish jurisprudence, and that it is not dependent for its existence upon Spanish legislation; we do not admit that there is, in truth, any substantial conflict between the two systems in this regard. We would, indeed, be surprised to find that the learned Spanish authors of the scientific and carefully wrought codes of Spain had disregarded a principle which the Supreme Court of the United States declares "obtains in all countries where there is any well-ordered system of jurisprudence." (Bradley *vs.* Fisher, *supra.*) It may be interesting, therefore, and perhaps profitable to glance for a moment at the provisions of Spanish law upon this subject.

It will be seen from the citations set out in marginal note F[1] that the liability (*responsabilidad*) of Spanish judicial officers was limited to the indemnification (*resarcimiento*) of damages to private persons when in the exercise of their functions they violated the laws through negligence or inexcusable ignorance; and it was further expressly provided that such negligence or ignorance is to be deemed inexcusable when it appears that those officers have pro-

---

[1] Marginal note F:

The provisions of Spanish law touching the civil liability of judicial officers are to be found in the *Ley de Enjuiciamiento Civil* (Code of Civil Procedure), book 2, Title VII, and the *Ley Orgánica del Poder Judicial* (Organic Law of the Judiciary), Title V, Chapter II.

Chapter II of Title V of the Organic Law is as follows:

"ART. 260. The civil liability of judges and justices shall be restricted to compensation for the damages they cause to private persons, to corporations or to the State, when, in the exercise of their functions, they violate the law through inexcusable negligence or ignorance.

"ART. 261. For the purposes of the preceding article, damages shall be understood to mean all such as, in their discretion, can be estimated by the courts of law in money.

"ART. 262. Negligence or ignorance will be held to be inexcusable when, even unintentionally, a judgment is rendered that is manifestly contrary to law, or if some procedure or formality be omitted which, by the provisions of the law, must be followed to avoid nullity.

"ART. 263. Civil damages can be demanded only at the instance of the injured party, or his legal representatives or successors in interest, in an ordinary action and before the tribunal immediately superior to that which has incurred the liability.

"ART. 264. When an action is commenced against the justices of one of the salas of the supreme court (of Spain) it must be brought before all the members of such tribunal, sitting as a court of justice, with the Chief Justice presiding.

"ART. 265. An action for civil damages cannot be brought until after the judgment in the action or suit in which the supposed injury was caused has become final.

"ART. 266. No action for civil damages can be commenced by a person who, having been able so to do, did not make an opportune objection during the course of the trial.

"The judgment pronounced in an action for civil damages shall in no event alter the final judgment."

nounced a ruling or judgment manifestly contrary to the law, or when they have failed to take some step or to comply with some formality which the law expressly prescribes, upon such conditions that the failure so to do invalidates the proceeding.

Here we have two separate grounds of liability, neither of them in anywise dependent on the motive or intent of the judge, so that in Spanish as in American jurisprudence the existence and character of the motive or intent behind the commission of the act complained of can have no place in the inquiry as to the civil liability of a judge of superior and general authority when acting within his jurisdiction.

One of the grounds of liability set out in the Spanish law, that is to say, manifest and inexcusable negligence in failing to take some step or to comply with some formality which the law expressly prescribes, is evidently limited to cases involving a failure on the part of the judge to perform some ministerial function prescribed by law, as to which he has no judicial discretion. And certainly this provision as to the liability of judicial officers is not in conflict with Anglo-American jurisprudence in this regard; for in England and the United States the liability of judicial officers for acts done in the performance of such ministerial functions as may be imposed upon them is generally recognized and sustained; the rule in this regard as laid down in 23 Cyc., 571, and many cases there cited being that:

> "For the wrongful execution of or refusal to perform a ministerial duty or authority annexed to a judicial office, the officer is answerable to the injured party in an action at law, whether or not he acts in good faith; or personally, or by a clerk whom he has authorized to perform the acts; and his judicial character affords him no protection."

The only other ground of civil liability of judicial officers under the Spanish law springs from inexcusable negligence or ignorance in pronouncing a ruling or judgment *mani-*

festly contrary to the law. But critically examined this provision appears to be substantially identical with the rule as to the liability of judicial officers, derived by the writer of the concurring opinion in the Forbes case (*supra*) from a careful review of the principles laid down by Anglo-American authorities—a rule which, as we have said, is much broader than the rule relied upon by us, and in which the narrower and more restricted rule is necessarily included. To say that a judge is only liable when he is guilty of inexcusable ignorance or negligence, and that ignorance or negligence will be deemed inexcusable only when a ruling or judgment *manifestly* contrary to the law is pronounced by the judge, is substantially equivalent to a declaration that the judge can only be held liable when it appears that the acts complained of were not done by him in the exercise of judicial discretion, were not done by him as a judge, were not the result of the exercise of judicial functions; because, in any case wherein the acts complained of appear to have been manifestly contrary to the law, no real question can have been submitted for decision; that is to say, no question whose determination required the exercise of judicial functions. In truth this branch of the rule of liability of judges as laid down in the Spanish law hardly admits of differentiation from the rule of liability as laid down in the concurring opinion in the Forbes case. But we shall not pursue this inquiry further, and content ourselves with setting out the rule as laid down in the syllabus of that opinion merely for purposes of convenient comparison.

> "*The Rule of Liability.*—The rule of liability is: If the question is one which a judge, qualified in the average way for the position occupied by the offending judge or for a similar judicial position, would regard as a real question, then it is one whose determination requires the exercise of judicial functions. But if it is one so clear that a judge, qualified as aforesaid, would not regard as a real question, then it is one whose determination does not require the ex-

> ercise of judicial functions. In the former case, the judge is not liable; in the latter, he is. (Forbes *vs.* Chuoco Tiaco, 16 Phil. Rep., 534.)"

We venture to assert, therefore, that the rule of liability of judicial officers, as laid down in the old Spanish law, is not in substantial conflict with that recognized by the American authorities upon which we rely. Both judicial systems recognize the liability of these officers for wrongs committed in the performance of purely ministerial functions; and the Spanish rule that liability is not incurred unless the act done is so manifestly contrary to the law as to negative the possibility that it was done in the exercise of judicial functions, though a broader rule than the rule on which we rely, that is to say that "judges of courts of superior and general jurisdiction are not liable for acts done *in the exercise of their judicial functions* and within their legal power and jurisdiction," is manifestly not in conflict therewith.

But counsel insist that the true rule as to the civil liability of judicial officers in these Islands is to be found in section 9 of Act No. 190, the only legislative enactment under American sovereignty, which, expressly, and in terms, treats of the "civil liability of judges." This section is one of the "general and preliminary provisions" of the Code of Civil Procedure, and is as follows:

> "*Civil Liability of Judges.*—No judge, justice of the peace, or assessor shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith, and within the limits of his legal powers and jurisdiction."

Counsel contend that under the provisions of this section all judicial officers may be held liable in civil actions for damages resulting from their erroneous or wrongful acts as judges, unless it appears that the acts complained of were done by them; first, in good faith; and second, within the limits of their legal powers and jurisdiction.

The contention seems to be that by expressly exempting judges from liability in certain cases, this section prescribes, by necessary implication, that they shall be liable in all other cases. We do not think that this contention can be maintained.

In the first place it fails to take into account the state of the law in force at the time when the Code of Civil Procedure was enacted. We think we have shown that after the enactment of Act No. 136 the rule of law, at least as to judges of superior and general jurisdiction, was that they were not liable to civil actions for damages when acting within their legal powers and jurisdiction. Doubtless the immunity will be held to extend to judges acting "in excess of their jurisdiction;" and it may be found that it should be extended so as to protect judicial officers of every kind to the full limits of the rule laid down in the concurring opinion in the Forbes case and the Spanish laws above cited. But beyond any question, the rule in its more restricted and limited form was in force in these Islands at the time when section 9 of Act No. 190 was promulgated. There is no necessary conflict between the provisions of this section and the rule as above enunciated, and they should not therefore be held to repeal or to abrogate the rule by necessary implication.[1]

It will be observed that the provisions of section 9 merely negative the existence of civil liability in certain cases. The section does not undertake to define the nature of the civil liability of judicial officers generally. It contains no affirmative provisions whatever imposing liability upon these officials. Yet it is contended that it not only abrogated the existing law touching the liability of judicial officers but inferentially prescribed the rule of liability in all cases; and this rule thus inferentially prescribed, one which is in conflict with the rule that, in the language of

[1] Hunter *vs.* City of Memphis, 93 Tenn., 571; Hornaday *vs.* State, 38 Kan., 499; Pacific R. Co. *vs.* Case County, 53 Mo., 17, 18.

the Supreme Court of the United States, "obtains in all countries where there is any well ordered system of jurisprudence."

If such had been the intention of the legislator we are convinced that he would have used language which would not admit of doubt as to its meaning. If the intent of the statute was to provide that judicial officers would be liable in all other cases than those mentioned therein, such an extraordinary provision would have been set forth in express terms and not left to mere inference. Certainly, in the absence of clear and express language we should not and will not read into the section of a general law of procedure a provision which the Supreme Court of the United States has declared would be subversive of the whole procedural system of which it forms a part. Indeed we venture to go further, and assert that even if the language were not doubtful, and if the provisions of this minor section of the general Code of Procedure expressly prescribed the rule of liability contended for by counsel for the appellants, it might well become our duty to declare it in conflict with the spirit and intent of the remaining provisions of the code, and to decline to enforce it. This, in order to conserve to the people of these Islands a free and independent judiciary, capable of securing to them those sacred rights guaranteed under the Philippine Bill of Rights, and strong enough to administer justice "without respect to persons" and to "faithfully and impartially discharge and perform all the duties incumbent upon it." For, quoting once again from the decision in Bradley *vs.* Fisher:

> "Liability to answer to every one who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful."

We hold that this "general and preliminary" provision of the Code of Civil Procedure is merely declaratory of the

law, as it existed prior to its enactment; and that it does not undertake to dispose of the whole subject of the liability of judicial officers. Its purpose and object is merely to set forth a general rule, applicable to all judicial officers alike, and under all circumstances. Unlike most of the provisions of that code, it is not, so far as we have been able to learn, borrowed from, or modeled upon any similar provisions in the statutes of any of the States. Counsel for both appellants and appellee account for its presence in the code by reference to certain administrative proceedings had about the time of its enactment, involving the removal from office of a judge of the Court of First Instance of Manila for misconduct in office; and to the uncertainty, which it is said existed at that time, as to the precise meaning of the provisions of Spanish law touching the liability of judicial officers to respond in civil actions and administrative proceedings for acts done in the exercise of their judicial functions. But however this may be, it is quite clear that the legislator sought, in section 9 of the code, to lay down a general rule as to the civil liability of all judicial officers, whether of general or limited, or of superior or inferior authority, which would secure to all such officers the protection furnished by a rule of liability, universally recognized in Anglo-American jurisprudence; and that he made no attempt to enter upon an exhaustive definition and exposition of the precise extent and limitation of the civil responsibility of the various classes of judicial officers for acts done by them in the exercise of their judicial functions.

An examination of American and English authorities discloses that there is much conflict of opinion as to whether the rule of civil liability upon which we rely in this opinion is applicable to judicial officers of inferior and limited jurisdiction as well as to those of superior and general authority; and it will be found that the various courts of last resort in the United States are by no means in agreement as to the degree of responsibility of these various classes of judicial officers for acts done in excess of their legal powers and

jurisdiction. Indeed the dissenting opinion in the case of Bradley *vs.* Fisher, frequently cited in this opinion, discloses that while the authorities are all agreed upon the rule of liability relied upon by us as to judges of superior and general authority acting within their jurisdiction, differences have arisen as to the liability of such officers when, acting in excess of their jurisdiction, they are alleged to have been actuated by malicious and corrupt motives. In the resultant uncertainty as to the true rule of liability of judicial officers generally in the United States, it is easy to understand why the Philippine Commission in laying down "general and preliminary provisions" in the new Code of Civil Procedure, did not attempt to harmonize all these conflicting views, nor to define the precise limitations of the civil liability of the various classes of judicial officers under all the varying circumstances which might present themselves.

While the doubts which arose as to the provisions of Spanish law on this subject might well have induced the American legislator to enact express provisions setting forth the rule universally recognized in the United States as to the limitations on the civil liability of judicial officers generally it is clear that it was not deemed prudent or expedient in the "general and preliminary provisions" of the Code of Civil Procedure to go further, and repeal existing law more specifically defining and limiting this liability in particular cases, or to undertake affirmatively to declare the nature and extent of the civil liability of judicial officers in all cases. This is precisely what we hold that a reading of the section itself discloses to have been the intention of the Commission in enacting it; and we are satisfied that the deductions drawn from it by the counsel for appellants are not justified by its terms, nor by a consideration of the conditions under which it was enacted and the mischief which it sought to remedy, and that the construction which counsel for appellants seeks to place upon it is contrary to those principles of public policy which ought to have con-

trolled and doubtless did control the legislator in its enactment.

Perhaps we should not conclude this discussion of the doctrine of immunity of judicial officers from civil liability in certain cases, without expressly directing attention to the fact that nothing therein is to be understood as giving to them the power to act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively without fear that they may be called to account for such conduct. No judge, however high his rank may be, is above or beyond the law which it is his high office to administer. Indeed, we would deem it our duty to be the first to take the necessary preliminary steps looking to the suspension and removal from office of the defendant, by impeachment or otherwise, if we were of opinion that the charges of misconduct in office preferred against him had any foundation in fact: and we would not allow the sun to set upon this day's session of the court without having issued the necessary orders for the institution of criminal proceedings against him, if we had reason to believe that there are any grounds for the criminal charges set forth in the complaint.

II.

Our holding that the defendant is not liable to respond in a civil action for the alleged damages, completely and sufficiently disposes of this appeal, and we might rest our judgment sustaining the judgment of the court below on that ground alone. Indeed, having arrived at our conclusion in this regard we would ordinarily proceed to enter judgment without further discussion of the various contentions of counsel. In view however of the exceptional nature of the allegations of the complaint, and especially in view of the gravity of the charges against the defendant therein specifically set forth, we deem it proper to examine in some detail the other grounds above stated, upon each of which, as we have said, the judgment of the court below may be

and should be sustained; each of them, in our opinion, being sufficient in itself for that purpose.

The second ground on which we base our judgment is that the complaint does not set out facts which constitute a cause of action, because, as we hold, a critical examination of the complaint and of the exhibits annexed thereto, together with the records of the cases specifically referred to therein, clearly demonstrates that the two judgments of this court out of which the alleged damages are said to have sprung, were not erroneous as alleged in the complaint; and on the contrary, that each of these causes was adjudicated "in accordance with the very right of the cause" and "agreeably to the law in the Philippine Islands."

Before entering on an examination of the complaint for this purpose, it will be well to refer briefly to certain elementary rules of pleading, as to which we believe there can be no cavil under the system of procedure in civil cases borrowed from Anglo-American jurisprudence and introduced in these Islands under the new Code of Civil Procedure.

While it is sometimes loosely stated that a demurrer admits the truth of all the allegations of fact set out in the complaint, the rule thus broadly stated has many important and well recognized limitations and restrictions. A more accurate statement of the rule is that a demurrer admits the truth of all *material and relevant* facts *which are well pleaded*. It will readily be seen that the italicized portion of the rule as thus stated modifies the looser and broader statement of the rule to a marked degree. Without stopping to discuss the reasons for the various rules of pleading set out in the following paragraph, we lay them down here, relying upon the reasoning and authority of the cases cited in support of each and all of them.

A demurrer admits only such matters of fact as are sufficiently pleaded (Com. Dig. Pleader (A 5); 4 Ia., 63; 14 Ga., 8; 9 Barb., 297; 7 Ark., 282; 6 Wash., 315; 7 Misc. Rep., 1); a demurrer does not admit the truth of mere

epithets charging fraud; nor allegations of legal conclusions (144 U. S., 75); nor an erroneous statement of law (97 Ala., 491). The admission of the truth of material and relevant facts well pleaded does not extend to render a demurrer an admission of inferences or conclusions drawn therefrom, even if alleged in the pleading; nor mere inferences or conclusions from facts not stated; nor conclusions of law; nor matters of evidence; nor surplusage and irrelevant matter. Furthermore, it is settled that the general rule touching admissions by demurrer does not apply *where the court may take judicial notice that the facts alleged are not true;* nor does it apply to legally impossible facts; *nor to facts which appear unfounded by a record incorporated in the pleading, or by a document referred to; nor to general averments contradicted by more specific averments.* So, also, the truth of scandalous matter, inserted merely to insult the opposing party is not admitted. (In support of these propositions see many scores of cases cited in 31 Cyc., 333, 334, 335, 336, and 337, and 6 Enc. Pl. & Pr., 334, 335, 336, 337, and 338.)

It has been deemed proper to set out these general propositions laid down by the courts of last resort in the United States touching the limitations on the general rule as to admissions by demurrer, because, in this jurisdiction, wherein a new system of procedure has been but lately introduced, the cases thus far decided have not very exhaustively considered the limitations on the rule; and for a clear understanding of this portion of our opinion, it is necessary that these limitations should be kept clearly in mind. But it is proper here to observe that most of these propositions are themselves subject to certain restrictions and limitations in accordance with the varying nature of the infinite variety of conditions to which they are applicable.

It will be well, also, before entering upon a discussion of the allegations of the complaint, to refer very briefly to the rules of pleading touching the incorporation into com-

plaints of exhibits and bills of particulars which the pleader desires to be shown for some purpose to the court or his adversary. The general rules on this subject are not wholly uniform; in various jurisdictions these rules have been greatly modified by statute; and many difficult and doubtful questions may, and doubtless will present themselves in the course of practice in this jurisdiction, in deciding the precise conditions under which the pleader, himself, will be permitted to rely upon such exhibits and bills of particulars in aid of the complaint filed by him; and in deciding whether the references in his complaint to such instruments and writings should be deemed sufficient to incorporate them into his complaint so as to make them an integral part thereof.

But we think that there can be no doubt that where the pleader voluntarily and for his own convenience refers to certain instruments or writings in terms which leaves no room for doubt as to their identity, and where the instruments or writings thus referred to are a part of the court files or records, he will rarely have just ground for complaint if, in such a case, these instruments or writings are held to be incorporated into his complaint, and to constitute a part thereof, so as to permit his adversary to refer to them in argument on demurrer. Indeed, "where no confusion can result, the practice of incorporating portions of the court files as a part of a pleading, by a proper reference, has in some cases been approved as tending to abbreviate the record," and this in favor of the pleader. (Sutherland *vs.* Sutherland, 102 Iowa, 535; Wishard *vs.* McNeil, 78 Iowa, 40.) In Cancino *vs.* Valdéz (3 Phil. Rep., 429) this court held as follows:

> "The original complaint having been held bad on demurrer, the plaintiffs filed an amended complaint, in which they referred to Exhibit A for a description of the land in litigation. Exhibit A was not attached to the amended complaint, but to the original complaint: *Held*, That under a liberal con-

> struction of the pleadings (authorized by section 106 of the Code of Civil Procedure) the amended complaint should be considered as though Exhibit A had been physically attached to it."

It is hardly necessary to add, that of course, where any doubt arises as to the meaning and scope of the language used in referring to such instruments and writings, the general rule applies, that "the pleading will be construed against the pleader." (39 Cent. Did. tit. Pleading, par. 66.)

It has been suggested that for the purpose of determining whether the facts alleged in the complaint in the case at bar constitute a cause of action, the court below might have taken judicial notice of the contents of the records of the various causes on file therein, and this whether the complaint itself made express reference to them or not. We do not deem it necessary to examine or decide this contention. The complaint sets forth a series of averments of judicial error, of willful misrepresentation of facts, and a number of specific acts done in bad faith, which it is alleged, are disclosed by a mere inspection of the records of two separate appealed cases on file in this court and the court below. The complaint expressly refers to these cases by title and register number, and incorporates extended extracts from the records of these cases as exhibits annexed to the complaint. We hold that the court below was fairly entitled to examine the records of these cases in ruling on the demurrer to the complaint, and that they had been sufficiently incorporated into the complaint for that purpose by the pleader himself.

As will be seen from the copy of the complaint set out in marginal note A, the pleader expressly and in detail refers to and definitely describes two separate cases, No. 4017 and 5719, filed in the Court of First Instance of the city of Manila; gives what purports to be a relation of the proceedings had in those cases and the various steps taken therein in that court and in this court on appeal; and bases his cause of action in large part on his allegations that the

relation of facts contained in the separate opinions filed in those cases, which were written by defendant, is not in accord with and perverts and misstates the facts disclosed by the records of those cases. He further alleges in the twentieth paragraph of the complaint as the very basis and foundation of his claim for relief, "That defendant performed each and every act hereinbefore alleged in relation to causes Nos. 4017 and 5719 wrongfully and with intent to injure the plaintiff Alzua, and with full knowledge of the facts herein set forth. Plaintiffs further allege that such knowledge appears from an inspection of the decisions in causes Nos. 4017 and 5719." It is very clear that he cannot complain if the court inspects those decisions, together with the record of the cases of which they are made a part, to ascertain whether these charges are or are not well founded.

The records of these cases not having been brought up on appeal, this court, under the authority of section 501 of the Code of Civil Procedure, which provides for the perfection of incomplete records, issued the necessary orders directing that they be brought here and united with the record of this case on appeal as an integral part thereof.

We have made a very careful examination and inspection of the records in the two cases referred to, in order to ascertain whether the judgments entered therein were or were not erroneous, and we have concluded that the judgments entered by this court in both cases were justly and properly rendered in accordance with the pleadings and the evidence set out therein; and further that in each case the judgment entered is in accord with the very right of the cause. Plaintiff specifically alleges that these judgments were erroneous, but it is very clear that that allegation is a mere conclusion of law, and of course, under the above set out rules of pleading, as well as in accord with the dictates of good sense, it is entitled to no consideration, and is not to be taken as admitted by the demurrer, when found to conflict with the basic facts well pleaded in the complaint.

Disregarding for the present all questions of practice and procedure, and looking only to the undisputed facts in the record of the former cases, and the actual results flowing from the judgments of the court in those cases, it appears that Alzua, a judgment creditor of a certain business association or partnership, by filing an indemnity bond in favor of the sheriff, induced the sheriff to sell the property of the partners and turn over all the proceeds, some P12,000, to her; that she induced the sheriff so to do over the formal and vigorous protest and opposition of two minor children, the heirs of a deceased Spaniard (who will hereafter be referred to as "the minors"); that this court held that these minor children had a preferred credit for some P12,000 against the property thus sold; and that the alleged erroneous judgment was, in effect, a declaration by this court that Alzua and her bondsmen should pay over to the minors this sum of P12,000, which they induced the sheriff to turn over to her, but which the court was of opinion should have been turned over to the minors.

If the facts, upon which the court rested its conclusion that the minors had preferred claim to the proceeds of the property sold by the sheriff, support the conclusion of the court in that regard, it will readily be seen that Alzua's extraordinary claim for P115,000 damages is based solely upon defendant's intervention in certain legal proceedings as a result of which Alzua was compelled to pay over to these minor children P12,000 to which they were justly entitled, and which Alzua had received from the common debtor without being justly entitled thereto. Let us see what are these facts. Fortunately there can be no question in regard to them. Case No. 4017 was submitted on an agreed statement of facts, and there is no dispute as to the facts in Case No. 5719.

Alzua's claim to the partnership funds in the hands of the sheriff rested on a judgment entered September 7, 1905, which is expressly based upon a document dated April 15,

1903, whereby the partners acknowledge the receipt from Alzua of the amount for which judgment was rendered.

The claim of the minors rested upon the express provisions of article 7 of the articles of partnership of the mercantile association known as "Viuda de Soler y J. Riu," a public document, executed by the partners, and duly inscribed in the mercantile registry of the city of Manila on the 30th of June, 1902, which this court construed to be an acknowledgment of indebtedness by the partnership to the minors in the sum of 9,868.29 pesos Mexican currency.

If the court properly construed this clause of the articles of partnership, there can be no possible question as to the right of the minors to a preferred claim in the proceeds of the sheriff's sale of the partnership property, and to have this right respected by the sheriff in the distribution of any partnership funds in his hand for that purpose. It is unnecessary to repeat here the reasoning upon which this conclusion rests. The reasoning will be found set out in full in numerous reported opinions wherein we have heretofore construed the provision of statutory law as applied in like cases. It is sufficient here to say that under the provisions of the Spanish Code as modified by the Acts of the Commission abrogating the bankruptcy provisions of that code, we have heretofore decided in a number of maturely considered cases, that:

> "Article 1924 of the Civil Code places judgment creditors in the order of their respective judgments in the third class of preferred creditors.
>
> "While article 1924 of the Civil Code was repealed by the enactment of the Code of Civil Procedure in so far as it is applicable to cases of bankruptcy and estates of deceased persons, its provisions are not limited to such cases and it remains in full force and effect when by intervention or otherwise a judgment creditor is a proper party to distribution proceedings of the funds or estate of his judgment debtor and duly asserts his rights as a preferred creditor.

"A creditor does not acquire a lien upon the property of his debtors by virtue of the filing of his complaint, the judgment, the issue of execution, or the levy thereunder, other than the mere right to a preference in the distribution of the funds or estate of his judgment debtor in those cases wherein, by intervention or otherwise, the judgment creditor is a proper party to the distribution proceedings, and duly asserts his right as a preferred creditor. (Syllabus, Peterson *vs.* Newberry, 6 Phil. Rep., 260.)

"A personal obligation evidenced by a public instrument is entitled to preference over an obligation upon a promissory note merged into a final judgment which bore date subsequent to that of the public instrument. (Syllabus, Olivares *vs.* Hoskyn & Co., 2 Phil. Rep., 689.)

"Credits or debts evidenced by a public document or final judgment shall be preferred in accordance with their respective dates. A debt evidenced by a public document dated the 9th of May, 1905, takes preference over a final judgment dated August 1 of the same year. (Syllabus, Gochuico *vs.* Ocampo, 7 Phil. Rep., 15.)"

Despite the vigorous contention of American counsel, relying on principles and practice quite generally recognized in the United States, we have steadfastly adhered to the doctrine laid down in the cases just cited, and many others of like tenor; and we hold that not only is it well founded in the substantive and procedural law of these Islands, but that the development of this doctrine in a long and unbroken line of decisions, beginning with the case of Martinez *vs.* Holliday, Wise & Co. in the first volume of our reports, makes it substantially a rule of property in these Islands not subject to change except by legislative enactment. (Martinez *vs.* Holliday, Wise & Co., 1 Phil. Rep., 194; Olivares *vs.* Hoskyn, 2 Phil. Rep., 689; Peterson *vs* Newberry, 6 Phil. Rep., 260; Gochuico *vs.* Ocampo, 7 Phil. Rep., 15; Soler *vs.* Alzoua, 8 Phil. Rep., 539; Strong *vs.* Van Buskirk, 10 Phil. Rep., 190; Compañía General de

Tabacos *vs.* Jeanjaquet, 12 Phil. Rep., 195; McMicking *vs.* Martinez, 15 Phil. Rep., 204.)

It is very clear, therefore, that upon the undisputed facts in the records of cases No. 4017 and No. 5719, the minors were entitled to a preference over Alzua in the distribution of the proceeds of the sale of the partnership goods, if this court properly construed the provisions of article 7 of the duly registered articles of partnership as an admission of indebtedness to the minors. The adjudication of this question presents some difficulty, but we adhere to our former holding that the articles of partnership expressly admit and recognize the existence of this obligation.

This seventh clause of the articles of partnership is as follows:

> "Seventh. Mrs. Martinez states that her sons Don Manuel and Don Enrique Soler y Martinez, both minors, have an interest in the capital supplied by her amounting to nine thousand eight hundred and sixty-eight pesos and twenty-nine cents which is the sum which went to them according to the instrument of adjudication of the property left by their father Don Manuel Soler y Cendra, executed before the Notary of this city, Don Antonio Costa y Fabrega, on the twenty-second of March last; but that this participation by no means ever can affect the partner Mr. Riu, because all the questions which by virtue of such participation may arise will be on account and risk of the said Mrs. Martinez with full and complete indemnity of the company formed by the present instrument."

It will be seen that this clause of the article expressly admits that, of the capital brought into the partnership, some nine thousand and odd pesos belonged to the minors, who (as is agreed on all sides and especially insisted upon by Alzua) were not partners. Taken by itself, and without any further restrictive provisions in the articles, we think that this admission must be taken to be an admission and an express recognition of indebtedness to that amount by the part-

nership. But it is contended that the meaning and effect of this formal recognition of indebtedness is modified by those clauses of the article which undertake to limit and restrict the liability of the partnership and of one of the partners in regard thereto.

In the case of Sunico *vs.* Chuidian (9 Phil. Rep., 625) we had occasion to examine some very analogous provisions in articles of partnership of a duly registered mercantile association, whereby the organizers of the association, after admitting the indebtedness of the partnership to certain minors (relatives of some of the partners in that case as in this), undertook to prescribe the conditions under which this indebtedness would be paid. In that case, after an exhaustive examination of the respective rights and liabilities of the partnership and the partners in mercantile associations duly registered under the provisions of the Code of Commerce, we said:

> "It does not appear, however, that the plaintiff was a member of said partnership, or that he ever agreed to this clause of the articles of partnership. On the contrary, it expressly appears from an examination of the said articles that he took no part therein, that he was not a partner, and that the debt due him stands on the same footing as any other indebtedness of the company, except that it is expressly recognized in the said articles. Under the circumstances the plaintiff is not and can not be bound by the provisions of the articles of partnership relied upon by the appellants nor can they have the effect of postponing his right of recovery, as contended by the appellant. (Sunico *vs.* Chuidian, 9 Phil. Rep., 633.)"

Without repeating here the discussion in the Chuidian case we hold that the minors not being members of the partnership, and never having agreed to the articles of partnership, the debt to them recognized in clause 7 thereof, stands on the same footing as any other indebtedness of the company, except that it is expressly recognized in the said ar-

ticles. The mutual agreements of the partners Riu and Martinez were and are of course mutually binding upon them, but such agreements should not be permitted to deprive the minors of their right to recover their money from a mercantile association, which solemnly acknowledged in a public instrument that it had received money or property of the minors amounting to some nine thousand and odd pesos, and made use of it for partnership purposes.

The only substantial objections which can be, and have been urged to this construction of the partnership articles, are that the partner Visitacion Martinez was the widowed mother of the minors, that as such she had a usufructuary interest in the property of the minors as "legal administratrix" thereof, that in using their property as part of the capital of the partnership she was acting within her legal rights, that as "legal administratrix" of this property she had a right to enter into such contracts with relation thereto as she might deem proper, and that she did in fact agree in clause 7 of the articles of partnership that neither the partnership nor her partner would become liable therefor.

This contention would merit very serious consideration, and certainly could not be passed over lightly, were it not for the fact that counsel expressly agreed in the "agreed statement of facts" upon which Case No. 4017 was submitted "that during none of the times above mentioned has Visitacion Martinez been the legal guardian of the said minors," referring to the time of the organization of the partnership and the incidents relating thereto which are set out in that agreement. This express admission of fact by counsel completely cuts the ground from under their feet, and leaves them helpless in their attempt in this court to inject into clause 7 of the articles the meaning and effect for which they contend. Indeed, so clearly did they themselves recognize this, that in their brief in that case in this court (p. 3, Brief for Emilia Alzua *et al.*) they say that this clause "slipped into the agreement" (*se ha colado en el convenio*) without their attention being called to it. A

fruitless attempt is made, of course, to explain it away, but an admission such as this, made by experienced counsel in an agreed statement of facts and submitted in open court at the very outset of the litigation, is a "stubborn child," and cannot be easily brushed aside. Indeed its legal effect is too apparent to admit of any other explanation than that the fact thus admitted is true, or that counsel made an egregious and inexcusable blunder.

It is nowhere contended or suggested that any unfair advantage was taken of counsel in the preparation of the "agreed statement of facts." No claim is made that astute counsel for her adversary hoodwinked or surprised counsel for Alzua. There is no intimation of sharp practice. And indeed the only explanation of the presence of this unrestricted stipulation of fact in the "agreed statement of facts" signed by counsel, and upon which the case went to trial, is the bare assertion of counsel that it slipped into the agreement without their attention being called to it. This explanation does not of course explain the fact away. It merely amounts to an admission that had counsel for Alzua appreciated the legal effect of this admission as fully before the case was tried as after they had heard the arguments of opposing counsel, they would not have submitted that case on "the agreed statement of facts."

The "agreed statement of facts" was a carefully prepared instrument in writing, signed by two separate firms of competent attorneys, representing the various parties to the cause, and it was formally submitted to the court with the prayer that the rights of the minors to the partnership property should be adjudicated in accordance therewith. It is futile now, as it was futile on appeal from the judgment rendered upon that agreed statement of facts, to ask this court to disregard a fact thus stipulated as true, or to decline to give it its manifest legal effect in adjudicating the rights of the parties to the action. In the absence of proof of sharp practice or surprise, neither this court nor the court below has or had any lawful authority so to do;

and there can be no doubt or question as to the legal effect and meaning which must be given the admission that Alzua was not the "legal guardian" of the minor children, in an agreed statement of fact, written in English, and signed by two separate firms of American attorneys, long after the promulgation of the new Code of Civil Procedure had established American rules of practice and procedure in civil cases in these Islands.

In this connection it may not be improper to say, in passing, that if there ever was any merit in the claim of the plaintiff Alzua to a preference over the minors in the distribution of the partnership funds (which, however, we do not recognize), this claim must necessarily have been based on the fact, if it be a fact, that in executing the articles of partnership and in using the funds or property of the minors as a part of the capital of the partnership, the widow Martinez was acting not merely for herself but also in her representative capacity as legal guardian or administratrix of the property of the minors. So that if plaintiff Alzua has been deprived of any right or property to which she was entitled, her loss is clearly and directly traceable to the fatal and inexcusable blunder of counsel in admitting at the very outset of the litigation that she was not their legal guardian, if in fact she was.

What has been said sufficiently demonstrates, we think, that disregarding all technical questions of pleading and practice, and looking only to the undisputed and indisputable facts out of which the litigation arose, as disclosed by the complaint and the court records incorporated therein, the substantial rights of the parties to that litigation were correctly adjudicated by this court on appeal; and we conclude that the claim of plaintiff Alzua for damages alleged to have resulted from the entry of the judgment of this court in case No. 5719 is not sustained by the facts well pleaded in the complaint—the effect of that judgment being merely to require her to pay over to the minors the amount which, by the filing of an indemnity bond, she had induced

the sheriff improperly to turn over to her instead of to the minors who were justly entitled thereto.

But plaintiff Alzua, through her counsel, insists that at various stages of the proceedings, this court, instigated by the defendant in this action, improperly disregarded certain technical rules of practice and procedure; and that the judgments actually entered in cases No. 4017 and No. 5719 could not and would not have been entered had the court proceeded, with due regard to these technical rules of practice and procedure, to apply the law in all its rigor to the cases submitted to it. It might, perhaps, be a sufficient answer to this contention, to say that mistakes of procedure or of reasoning made by the court in arriving at its conclusions could not have occasioned any damage to the plaintiff, if the conclusions actually arrived at were sound, and if the judgments which she avers were erroneously entered merely required her to do something which it was her duty to do whether those judgments were entered or not. But the facts well pleaded in the complaint, and the records of cases No. 4017 and No. 5719 incorporated therein, justify us in going further, and after a thorough review of all the proceedings, we hold and think we should formally so declare, that the judgments complained of were not erroneously entered and that they dispose of the issues submitted to the court, not only in accord with substantial justice, but with due regard for sound rules of practice and procedure and "agreeably to the law in the Philippine Islands."

Without extending this decision intolerably, we can not enter into an exhaustive discussion and argument in support of each and all of our rulings throughout this extended litigation; but we shall endeavor to notice the various contentions on which plaintiff Alzua by her counsel bases her asseverations as to error in the proceedings had on appeal, indicating as briefly as may be the grounds on which we hold that these contentions are not well founded.

It is contended that this court erred in deciding these cases on the theory of preferred credits. Counsel direct

attention to the fact that when the minors, by their guardian, first intervened in the proceedings, they set up a claim of ownership in the partnership property which had been levied upon by the sheriff, and, claiming an interest in the property as partners, demanded that he release his levy; and attention is particularly directed to the fact that the formal complaint, upon which the minors instituted the injunction proceedings against the sheriff, reiterated this claim of an interest in the partnership property. Counsel insist that the minors themselves having thus rested their right to intervene in the sheriff's proceedings on a claim of ownership, this court should have strictly limited itself to the consideration of that question when the litigation was submitted to it on appeal.

While it is true that at the outset of the litigation the guardian *ad litem* of the minors did, in fact, rest their claim of a right of intervention on an erroneous construction or misconception of the articles of partnership, and that he asserted on their behalf a claim of an interest in the partnership property as partners, nevertheless, the record clearly discloses that this claim was promptly abandoned, and that thereafter, the contention of the minors was steadfastly and squarely plaated on their claim of a right to intervene in the proceedings as preferred creditors of the common debtor.

The very first printed brief connected with this litigation, submitted to this court on appeal (filed on June 5, 1906, by counsel for the minors in case No. 4017, wherein the minors were plaintiffs and Alzua and the sheriff were defendants), contains on page 4 the following: "In the court below the question as to whether the minors could be in equity considered partners in the business levied upon was abandoned and stress laid upon the point that the evidence showed that the minors had a claim *preferred over that* of defendant, Emilia Alzua's, under article of the Civil Code, No. 1924, 3 A." The reply brief filed by counsel for Alzua, opens on

page 1 with the following admission: "The statement of facts contained in appellant's brief is substantially correct." It is true that counsel for Alzua, in the argument in their brief, contended that the minors should not be permitted thus to change their ground, without modifying or amending the original complaint as filed in the action, because counsel for the defense had directed their defense against the allegations of the complaint and not against the claim as preferred creditors then being submitted to the Supreme Court. But counsel, in their brief, nowhere modified or limited their admission of the substantial correctness of the statement of counsel for the minors, that in the court below the minors' claim to a right to intervene as partners "was abandoned, and stress laid" upon their claim as preferred creditors.

Without considering for the present, the right of the minors thus to abandon their claim of ownership and lay stress on their interest in the property as preferred creditors until they had first formally amended their complaint, *it is quite clear from counsel's own admission, that as far back as the date of the trial in the Court of First Instance of the injunction proceedings in case No. 4017, and before the sale of the partnership property, and before the proceeds thereof were turned over to Alzua, the sheriff and Alzua, who were defendants in those proceedings, and their counsel, were formally notified of the minors' claim to an interest in the property as preferred creditors;* and from that time until the conclusion of the litigation in this court and the entry of final judgment in case No. 5719, the records disclose that their contentions were persistently and unwaveringly based on that theory.

Let us now consider whether they had a right to be heard upon this contention, and whether this court erred in supporting their contention and directing as it did, that the court below enter the necessary decree to secure their rights thereunder. We have already shown that under the law in force in these Islands, and in accordance with the uniform doctrine laid down in a long line of decisions of this court,

the minors had a right as preferred creditors to have their right of preference respected in the distribution of the funds of the sheriff, if they duly asserted that right; and the only further question that remains to be considered is whether they did so assert it, and whether this right was duly submitted to the court for adjudication. In case No. 4017 (the injunction proceedings), the stipulation of facts, among other things, sets out in full the articles of partnership, and this court's judgment as to the minors' right to a preference was expressly based on its construction of the provisions of those articles. In submitting the stipulation of facts, the various parties (the minors, Alzua, and the sheriff) by their respective counsel concluded as follows:

> "It is respectfully prayed by the parties hereto that the honorable court upon the above statement of facts decide the rights of the said minors to the property in question."

In accord with this request this court did decide the rights of the minors to the property in question, and held that while they had no rights thereto as partners or owners, they had the interest therein which the law, under certain circumstances, gives to preferred creditors with all the rights springing from such an interest. It is very clear, therefore, that the claim now urged that this judgment of the court was erroneous, and caused damage to the plaintiff Alzua, in so far as it is based on the mere fact that the court examined the statement of facts thus submitted, and adjudicated the right of the minors to the property in accordance with the prayer of all the parties to the action, is so specious that it needs only this statement of the facts to refute it.

But even if the stipulation entered into by the parties had not expressly and formally prayed the court to decide the rights of the minors thereon, the claim that this court erred in adjudicating the cause upon the theory of preferred credits could not be sustained, and is in direct conflict

with the uniform practice and procedure of the courts in this jurisdiction. Under our system of pleading it is the duty of the courts to grant the relief to which the parties are shown to be entitled by their allegations and the facts proven at the trial, and the mere fact that they themselves misconstrue the legal effect of the facts thus alleged and proven will not prevent the court from placing the just construction thereon, and adjudicating the issues accordingly. Indeed, under the liberal system of amendments authorized in our Code of Civil Procedure, amendments may be and have always been freely allowed to a complaint at any time before final judgment, so as to prevent a miscarriage of justice; and in such cases, the court in rendering its judgment not infrequently treats such amendments as actually made without the necessity for formal correction. (Code of Civil Procedure, section 110; Bliss on Code Pleading, 161, 162, and note; Brocal *vs.* Molina, 5 Phil. Rep., 507; Gsell *vs.* Yap Jue, 6 Phil. Rep., 143; De la Rosa *vs.* Arenas, 7 Phil. Rep., 556; Fianza *vs.* Reavis, 7 Phil. Rep., 610; Quison *vs.* Salud, 12 Phil. Rep., 109; Espiritu *vs.* Crossfield, 14 Phil. Rep., 588; Alonso *vs.* Villamor, 16 Phil. Rep., 315.) When it appears, as it does from the records of the cases incorporated into the complaint in this action, that the facts stipulated support a certain theory of the case, and that after abandoning the theory of recovery upon which the original complaint was framed the plaintiff relied upon and "laid stress upon" the theory supported by the facts disclosed by "an agreed statement of facts" submitted to the court below, it is absurd to contend that on appeal, the appellate court erred in deciding the case according to the facts stipulated and the theory of the case actually relied upon by the plaintiff, rather than upon the abandoned theory of the complaint.

The next contention as to alleged error of procedure and practice which we shall notice, is based on the fact that this court gave judgment against the plaintiff Alzua, and the bondsmen upon the indemnity bond to the sheriff,

without holding the sheriff himself liable. It appears from the record that the complaint in case No. 5719 was dismissed as to the sheriff on demurrer in the court below; that no exception was taken to the court's action dismissing the complaint as to him; and that as a result this court never was called upon to adjudicate the liability of the sheriff nor to review the action of the court below in this regard. It is not necessary for us now to discuss or decide whether, upon appeal, we would have followed the general doctrine holding the sheriff liable as well as the indemnitor and his bondsmen, or whether we would have followed the doctrine laid down in some States whose statutory regulations prescribing the duties of sheriffs are very similar to our own, whereby the sheriff on taking a sufficient indemnity bond is relieved from liability, the indemnitor and his bondsmen being alone held liable. It is sufficient, for the purposes of this decision, to say that the question of the liability of the sheriff never was submitted to us.

But it is contended that it is a legal absurdity to hold the indemnitor and his bondsmen liable, unless the sheriff in whose favor the bond was given is also held liable. In the discussion of the case much was made of this contention, and a great outcry was made as to what counsel for Alzua is pleased to describe as the palpable and inexcusable absurdity of the position of the court in this regard. But however absurd the action of the court in this regard may seem to counsel, we deem it a sufficient answer to quote as a complete justification of our action the opinion of the Supreme Court of the United States in the case of Lovejoy *vs.* Murray (3 Wallace, 1-19, 70 U. S.).

> "The demand for indemnity, and the giving of it by the defendants, proceeded upon the supposition that the sheriff would without it go no further in that direction, but would give up the property to the claimant, the present plaintiff, and make his peace on the best terms he could. By the present statute of Iowa he had a right to do this, if the plaintiff in attachment refused to assume the hazard of in-

demnifying him. And if there were no such statute, he had a right to deliver the property to the claimant, and risk a suit by the plaintiff in attachment, rather than a contest with a rightful claimant of the goods.

"The giving of the bond by the present defendants must, therefore, be held equivalent to a personal interference in the course of the proceeding, by directing or requesting the sheriff to hold the goods as if they were the property of the defendants in attachment. In doing this they assumed the direction and control of the sheriff's future action, so far as it might constitute a trespass; and they became to that extent the principals, and he their agent in the transaction. This made them responsible for the continuance of the wrongful possession, and for the sale and conversion of the goods; in other words, for all the real damages which plaintiff sustained.

* * * * * * *

"The faithful and exhaustive research of counsel, in this case, shows that there are conflicting authorities, not only on the main proposition, but on several incidental and collateral points closely connected with it. Two propositions, however, seem to be conceded by all the authorities, which bear with more or less force on the main question, and which may as well be stated here.

"1. That persons engaged in committing the same trespass are joint and several trespassers, and not joint trespassers exclusively. Like persons liable on a joint and several contract, they may be all sued in one action; or one may be sued alone, and cannot plead the non-joinder of others in abatement; and so far is the doctrine of several liability carried, that the defendants, where more than one are sued in the same action, may sever in their pleas, and the jury may find several verdicts, and on several verdicts of guilty may assess different sums as damages."

In his contention in the case at bar, senior counsel for Alzua falls into the same error as that which led him astray in his argument on the appeal of case No. 5719. Then as now, he insisted that there could be no liability on the

part of Alzua and her bondsmen if the sheriff himself was not held liable. Accordingly he rested his contention on appeal, in that case, substantially on this single proposition, and apparently did not deem it necessary to support it in his brief with argument or the citation of authority. As we understand his contention it is that case No. 5719 was an action on the indemnity bond; that the bond having been given to the sheriff to indemnify him and his official bondsmen, the minors should not have been permitted to institute or maintain such an action; and that even if they could institute and maintain an action on the bond, they could not recover, unless and until it appeared that the sheriff had actually incurred the losses which the bond was given to indemnify. But the action in question was not, in this technical sense, an action on the bond. It is true that the complaint sets out in detail the facts touching the execution of the bond, and alleges that the execution of the bond rendered Alzua and her bondsmen liable for the damages for which joint and several judgment was prayed against the defendants. To this extent, and to this extent only was the action founded on the indemnity bond. But the action was instituted against the sheriff and his deputy, jointly with Alzua and her bondsmen, and manifestly could not have been directed against the sheriff "on the bond" of indemnity; and it sets forth facts, which when proven, clearly established the minors' right to recovery against Alzua and her bondsmen under the doctrine of the case of Lovejoy *vs.* Murray just cited.

So much has been said as to the alleged palpable error of this court in holding Alzua and her bondsmen directly liable to the minors, notwithstanding the dismissal of the complaint as to the sheriff, that at the risk of unduly prolonging this opinion, we here insert citations from the opinions of two of the courts of last resort in the United States, wherein contentions quite analogous to those of counsel for Alzua were ruled upon adversely.

The Supreme Court of Appeals of New York in the case of Dyett *vs.* Hyman *et al.* (129 N. Y. (Sickles), 351) held that:

> "The execution of a bond to a sheriff indemnifying him against damages resulting from an unlawful levy and sale of property made by him, presumptively establishes the liability of the obligors as principals for the original trespass committed by the sheriff.
>
> "Those thus connected with the original wrong are jointly and severally liable with the sheriff, and it is no defense, in an action by the owner of the property against one or more of the wrong-doers, to show that others were not joined as defendants who are also liable.
>
> "Where an action is brought against several alleged joint wrong-doers, the plaintiff may at any time, by leave of the court, discontinue the action as to one or more of the defendants."

So the Supreme Court of Arkansas, in the case of Rice *vs.* Wood (31 L. R. A., 644) commented as follows on contentions of counsel almost identical with those now urged in this court:

> "The appellees contend that the judgment should be affirmed, without regard to whether there were errors committed against the appellants at the trial, because, as they claim, the suit instituted by the plaintiffs cannot be maintained under the law. They claim that the bond was personal to the sheriff, and that he alone can sue on it, and that he cannot sue until he has been damaged. It is also said that the statute makes no provisions for an indemnity bond in attachment cases; and it is further urged as a defense against the action of the plaintiffs that it is doubtful whether the defendants, by signing the bond, became participants in the trespass; and, if they did become so, it is claimed that they could only be sued in trespass, and not on the bond.
>
> "If this suit was by the sheriff against the defendants on the bond, it would be necessary for him to show how and in what respect he had been

damaged; and in such a case it might be necessary to determine whether the statute contemplates the indemnity bond mentioned, although it is questionable even in that case whether the defendants, having executed the bond under the circumstances, would be heard at all to contest its legality. But there is no such case here, for this is not a suit on the bond, but a suit against the defendants to recover the value of the plaintiffs' goods, which it is claimed were taken to pay the debt of another, and for which taking it is alleged the defendants were responsible.

"The contention of appellees that it is doubtful whether they became participants in the trespass by making the bond in our opinion, is not well taken. It seems to us that that act made them the real principals in the transaction. In order to maintain the action, it is only necessary for plaintiffs to show: First, that they owned the goods taken; second, their value; and, third, that the defendants participated in the taking or caused the same. And the right to maintain the suit cannot be made to depend upon the existence or non-existence of any statute. It is simply the common right that every one has to recover the value of his property when wrongfully taken. The plaintiffs, if they owned the goods, could have sued McGuire and the sheriff and the defendants jointly, if they desired, or either of them separately. (Lovejoy *vs.* Murray, 70 U. S., 3 Wall., 19, 18 L. ed., 134.)"

We rely, without further discussion, upon the reasoning and authority of the cases just cited, in support of our holding that it was not error in the judgment of this court entered in case No. 5719, to hold the sheriff's indemnitor and her bondsmen liable, notwithstanding the fact that the complaint had been dismissed, as against the sheriff, upon demurrer in the court below. As will be seen from the reasoning in the citation from those decisions, the action might have been instituted and maintained against the indemnitor and her bondsmen without including the sheriff as a party—their liability arising out of the execution of

the bond whereby the sheriff was induced to improperly distribute funds to the indemnitor Alzua to which the minors had a preferred claim.

The next contention as to procedural error in the decision of the former cases which we shall briefly notice, is that the court improperly treated the facts found in case No. 4017 as conclusive in case No. 5719. Counsel's entire argument on this point on the appeal of the latter case, was thus briefly stated on page 3 of their printed brief: "The appellants invoke the case reported in volume 8, page 539, Philippine Reports, as *res adjudicata*. That is in fact virtually the same case. There is however one great and fundamental difference, Visitación Martinez was not a party in that case. This defendant should be the only and real defendant. The case referred to can therefore not be invoked as *res adjudicata* of the questions invoked in the present suit. The former suit was a petition for an injunction. There was no judgment asked other than injunction."

It will be seen that counsel recognized and admitted the fact that the two cases were virtually the same except for what he describes as the "one great and fundamental difference," that Visitación Martinez was not a party in that case. But an examination of the pleadings makes it very clear that this objection was not well founded. It is true that Visitación Martinez, and we may add her partner Riu, the members of the mercantile association, were made parties defendant to the second action and were not parties to the former action. But it also appears that there was no connection whatever between the cause of action set out in the complaint as it affected Mrs. Martinez and her partner Riu, and that set out against the sheriff, the indemnitor and his bondsmen. The complaint alleged as one cause of action that the partners were indebted to plaintiff for goods or money had and received which had never been paid, and this cause of action was directed solely and exclusively against the partners. The cause of action against

the sheriff, jointly with Alzua and her bondsmen, was in substance that they had distributed and appropriated the proceeds of the sale of certain partnership property, in utter disregard of the minors' preferential interest therein. Manifestly the real parties to this cause of action were the same as those in the former case, No. 4017; and as between them, the cause of action, the subject-matter and the parties being "virtually" and substantially the same, the court properly held the facts found in former case conclusive in the second. It may be admitted that the facts found in the judgment in the former case could not properly be held conclusive as to the separate cause of action in which the partners were the real and in fact the only defendants, but this in nowise affects the correctness of the ruling as to the cause of action in which the sheriff, his indemnitor (Alzua) and her bondsmen were the real and only parties.

The truth of the matter appears to be, that when that action came up on appeal the contest was directed exclusively to the issue between the minors on the one hand, and the sheriff and his indemnitors on the other. Mrs. Martinez in the court below had confessed judgment, and the other partner, whatever may have been his rights, was not represented by counsel on appeal, or at least no brief was filed on his behalf. It may be that the reasoning of the opinion, being exclusively directed to the contention of counsel as to the cause of action as to which the minors and the indemnitor and her bondsmen were the only real parties, did not set forth in sufficient detail the grounds upon which the action of the court as to the partner, Riu, was based. But the action of the court relative to the cause of action as to which the partners were parties, could not and did not have any bearing or effect on its adjudication of the cause of action as to which Alzua and her bondsmen were parties; and it certainly furnishes no ground for complaint so far as she is concerned. The two separate causes of action having no substantial relation one to the other, and the defendants

who were sought to be held upon the different causes of action not being the same, separate actions might have been, and in good practice ought to have been instituted on each separate cause of action. But since no objection had been made on this ground in the court below, that question was neither raised nor considered when the case came up on appeal.

To our mind these observations satisfactorily dispose of counsel's objections in this regard; but to make it very clear that we are announcing no new doctrine as to the terms upon which the plea of *res judicata* may be considered, we here insert some citations from text-books and judicial authority.

> "*Estoppel by Judgment; Effect of Additional Parties.*—It is not always a conclusive objection to the admissibility of a record as an estoppel or as a bar that the parties to the former action included some who are not joined in the second action, or *vice versa*. (Black on Judgments, vol. 2, par. 543.)
>
> "The fact that parties in the first suit are not identically the same as those in the second, when the first case was decided on the merits, and not upon an exception to joinder or non-joinder of parties, is certainly no answer to the plea (of former recovery); otherwise, no matter how often a case be decided, the parties might renew the litigation by simply joining with them a new party. (Gerardin *vs.* Dean, 49 Tex., 243.)
>
> "The objection that the first action was between other parties is not well grounded, and has no basis in fact to rest it upon the principle of *res inter alios acta*. That principle applies where the party against whom the record is offered was not himself a party to it. In such case, the general rule is that the record is not admissible. But here this defendant was a party to that record, and the objection in fact is that other persons were also parties thereto. As we understand the rule, that single fact alone constitutes no valid objection to the admission of the record. (Larum *vs.* Wilmer, 35 Iowa, 244.)"

In this connection, counsel also contend that the court fell into manifest error, in that it applied the doctrine of *res judicata* in case No. 5719, although the parties themselves had not, as he now alleges, formally "pleaded or introduced the decision in cause No. 4017 in evidence." As will be seen from the citation from counsel's own brief on the appeal in case No. 5719 (*supra*) he himself directly invited the attention of the court to the fact that his adversary "invoked the case reported in volume 8, Philippine Reports, page 539, as *res judicata*," but in his argument in that brief there was no intimation that this claim had not been well pleaded. On the contrary, counsel unqualifiedly admitted that the doctrine had been invoked, and limited his objections to its consideration to the alleged failure of identity of parties. Clearly, it was his own fault if the court, in good faith, accepted his statement of the fact, in this regard, and took it for granted that this claim had been invoked in due form. Furthermore, in his written motion for a rehearing, after the opinion was filed, and before final judgment was entered, counsel again objected to the application of the doctrine of *res judicata* in reliance upon the former decision, and again based his argument on the ground that the parties to the different actions were not identical, *without intimating or suggesting that the claim had not been well pleaded.* Indeed, the first intimation by counsel that the doctrine had not been technically invoked occurs in an assignment of error, *submitted after the judgment had become final,* in the preparation of the record for an appeal to the Supreme Court of the United States, which, for some reason which does not appear, was thereafter abandoned. There can be no question that the court was justified in assuming that had there been any defect in the form in which the doctrine had been invoked, counsel would have been the first to direct the attention of the court to that fact, *unless he intended to waive the objection.* It comes with ill grace from his mouth to charge the defendant in this action with negligence and bad faith, because he failed to study the record in order to

discover formal defects therein which counsel himself neglected to point out in his brief, or in his motion for a rehearing after the opinion had been filed.

It is not a part of the duty of an appellate court to search out formal or even substantial procedural defects in the proceedings had in the court below, to which its attention is not directed by counsel in the bill of exceptions, in the printed and written briefs, or in oral argument on appeal. See many cases cited in 2 Cyc., 1014 and 1015. That is the duty of counsel, and their brief should furnish the court and opposing counsel with full notice of the points of law which they desire to establish, together with the arguments and authorities upon which they raise or rest their contentions. (Black L. Dict., 155; Anonymous, 40 Ill., 57. See also Anderson L. Dict.; Bouvier L. Dict.; Haberlau *vs.* Lake Shore, etc., R. Co., 73 Ill. App., 261; Elliott App. Proc., par. 438.) If counsel is not sufficiently industrious and alive to the interests of his client to bring such matters to the attention of the court, in the event that he thinks they have any bearing on his case pending on appeal, neither he nor his client has any just cause for complaint, after final judgment rendered, because the appellate court appears to have disregarded such alleged defects, or to have treated them as waived by counsel by his silence when he had his day in court.

It is worthy of observation in this connection that under the "better doctrine" as laid down in the courts of last resort in the United States, as appears from the citation below, final and conclusive effect could and should have been given, under all the circumstances of this case, to the prior adjudication, whether it was or was not set up by formal plea, if it was in fact set up in the course of the evidence; or what is substantially equivalent, if it was "invoked" and thus brought to the attention of the court, and by admission of counsel, tacit or express, objection was waived as to defects in the technical form in which the claim was submitted.

"*Former Recovery as a Bar; Necessity of Pleading Prior Adjudication.*—Upon the question, whether a party who intends to rely upon a former adjudication as conclusive of the matters presently in issue must plead it as an estoppel, on pain of being deprived of its benefit as a claim or defense if he omits to do so, or whether he may simply introduce the record in evidence, with the same final effect as if it had been pleaded, the authorities are by no means in harmony.

* * * * * * *

"In the United States there has been great contrariety of opinion. Numerous cases, in accordance with the English rule, hold that the benefit of an estoppel by record is waived unless it is seasonably interposed by plea. In one State it is said that if the circumstances and course of proceedings admit, a defendant who relies upon a former judgment must plead it, so as to give the plaintiff an opportunity to set up any objection he may have to its validity. In another, 'it is the settled rule of pleading that where a party makes a judgment of a court the foundation of his action or defense, he must make the record of such judgment, or a transcript of it, a part of the pleading setting it up, as in case of written instruments. Former recovery cannot be given in evidence under the general denial.'

* * * * * * *

"But these views, as we shall presently show, are not supported by the majority of the decisions of the American courts. On the contrary, *the general tendency is to attach the same final and conclusive effect to a prior adjudication wherever and whenever it is set up*, whether that be done by plea or in the course of the evidence. (Black on Judgments, vol. 2, par. 783.)"

One other alleged error of practice and procedure remains to be noticed. Counsel lay much stress upon the action of this court in correcting and amending the original memorandum order filed with the clerk which directed the entry of a judgment affirming the judgment of the court below in

case No. 4017, and thereupon directing the entry of a judgment revoking the judgment of the trial court. We are not now considering the objections to the intervention of the defendant in this regard. We here refer only to the objections to the action of the court in itself issuing the order dated July 29, 1907, ratifying, affirming and adopting as its own the corrections made by the defendant in the original order filed March 27, 1907, and at the same time directing the entry of judgment reversing the judgment of the lower court. It is said that the court had no authority so to do.

That any such contention is seriously urged at this time is only explicable on the theory that counsel wholly fails to keep in mind the vital difference between an order of the court directing the entry of judgment by the clerk, and the judgment itself when duly entered in compliance with the order. For while we have no doubt that, under all the circumstances of this case, the court might and should have ordered the amendment of the judgment itself had it been actually entered; we admit that in that event there might have been some room for discussion as to the precise limitations and extent of the authority of the court thus to amend in matters of form and of substance a final judgment duly entered by the clerk. But we cannot conceive that there can be any question as to the right of this court to correct and amend, in matters of form or of substance, its orders directing the entry of judgment at a later day, when such corrections or amendments are made prior to the actual entry of the judgment in compliance with the order of the court, before the record on appeal has been returned to the court below, and before any action has been or could have been taken on a motion for rehearing then pending. That such was the status of the case at the time the amending order was entered by the court is clearly disclosed by the most superficial examination of the record.

Such corrections have frequently been made from the earliest days of the organization of this court. Indeed, the

uniform practice whereby these orders are framed so as to postpone the entry of judgment by the clerk for a more or less extended period, usually twenty days from the filing of the order, has its explanation in the advantages which it is believed are secured, by thus giving any one interested an opportunity to call the attention of the court to errors in orders directing the entry of judgment, which should be corrected. As a matter of practice, the court, *ex mero motu*, or on motion of an interested party, always makes such correction when it appears that it has fallen into error in issuing such orders.

In the case of Arnedo *vs.* Liongson (18 Phil. Rep., 257), after a somewhat extended examination of our own statutes and of the common-law rules as modified by practice and statutory regulation in the United States, we said:

> "We conclude, therefore, that in the absence of statutory provisions expressly extending or limiting the time within which the courts in these Islands may vacate judgments and grant new trials or enter new judgments on the ground of error in fact or in law into which the court may be of opinion that it has fallen, these courts have no power thus to vacate judgments after they have become final in the sense that the party in whose favor they are rendered is entitled as of right, to have execution thereon, but that prior thereto the courts have plenary control over the proceedings including the judgment, and in the exercise of a sound judicial discretion may take such proper action in this regard as 'truth and justice require.'"

It cannot be doubted that under the rule thus laid down, this court had "plenary control" over the order in question, to correct errors of law or of fact by amending it in form or in substance.

What has been said disposes of all the substantial contentions of counsel as to alleged errors of procedure and practice in the course of the litigation under review. In the

course of three days' oral argument counsel for appellant touched upon some other alleged errors of this nature, but we do not deem it necessary to examine these contentions in detail. Time and space forbid. It must suffice to say that we have carefully considered all the objections raised by counsel, and that we are convinced that no error prejudicial to the rights of plaintiff Alzua was committed in the entry of the judgments in the cases mentioned in the complaint.

III.

The third ground on which we rest our judgment affirming the judgment of the court below is that the complaint itself, read together with the exhibits and court records incorporated therein, sets forth facts which justify us in holding: First, that the surmises, conjectures, inferential allegations and specific charges of official misconduct and wrongdoing attributed to the defendant in the complaint are not well founded; and Second, that the allegations of malice, of intent to injure the plaintiff and of bad faith on the part of the defendant are not sustained, and on the contrary are directly controverted, by the specific averments of fact well pleaded in the complaint, when read together with the court records referred to therein.

Counsel for plaintiff squarely rest her claim of a right of recovery upon their construction of the above cited provisions of section 9 of the Code of Civil Procedure. They contend that although the defendant is a judge of a court of superior and general authority, he is liable, nevertheless, for damages resulting from acts done in the exercise of his judicial functions, if it appears that these acts were not done in "good faith," or that they were not "within the limits of his legal powers and jurisdiction." We have shown already that there can be no question that the defendant was acting strictly "within the limits of his legal powers and jurisdiction" when he did each and all of the acts well pleaded in the complaint. It necessarily results that upon

plaintiff's own theory of the case, the defendant is not liable to respond in this action for alleged damages resulting from these acts unless it is made to appear that he was not acting in good faith. Bad faith is never presumed, and to support a judgment for such damages, *facts which justify the inference of a lack or absence of good faith must be alleged and proven.* (Civil Code, art. 434.) "Good faith is the opposite of fraud, and of bad faith; and its non-existence must be established by proof." (McConnel *vs.* Street, 17 Ill., 253.) "The presumption against fraud, and its equivalent expression that good faith is presumed, or that fraud is never presumed," declare the rule that the burden of evidence as to the existence of fraud is upon the party alleging it. (Friedman *vs.* Shamblin, 117 Ala., 454, 23 So., 821; Levy *vs.* Scott, 115 Cal., 39, 46 Pac., 892; Webb *vs.* Marks, 10 Colo. App., 429, 51 Pac., 518; Baxter *vs.* Ellis, 57 Me., 178; Weybrick *vs.* Harris, 31 Kan., 92, 1 Pac., 271; State *vs.* Washington Steam Fire Co., 78 Miss., 449, 24 So., 877; Henry *vs.* Buddecke, 81 Mo. App., 360; Manchaca *vs.* Field, 62 Tex., 135; Smith *vs.* Collins, 94 Ala., 394, 10 So., 334; Seals *vs.* Robinson, 75 Ala., 363; Warren *vs.* Gabriel, 51 Ala., 235; Little Rock Bank *vs.* Frank, 63 Ark., 16, 37 S. W., 400, 58 Am. St. Rep. 65.)

Under the well-settled rules of pleading hereinbefore set out, neither legal conclusions nor conclusions or inferences of fact from facts not stated, nor incorrect inferences or conclusions from facts stated, are admitted by a demurrer to a complaint. Conclusions of this nature in no wise aid the pleading. The ultimate facts upon which such conclusions rest must be alleged, though merely probative or evidentiary facts may be and should be omitted.

It is not always easy to determine whether a pleading states a legal conclusion or merely states facts according to their legal effect, and the decisions are not entirely uniform in applying the rule. But it has been held that the following examples of allegations found in pleadings filed in the courts in the United States are mere legal conclusions, and

that such allegations are not well pleaded, unless the ultimate facts upon which they rest are set forth in the pleadings. *Averments that defendant's action was arbitrary* (Ricketts *vs.* Crewdson, 13 Wyo., 284, 79 Pac., 1042, 81 Pac., 1), *or illegal* (Ricketts *vs.* Crewdson, 13 Wyo., 284, 79 Pac., 1042, 81 Pac., 1), *or wrongful or wrongfully done* (Montgomery *vs.* Gilmer, 33 Ala., 116, 70 Am. Dec., 562; Miles *vs.* McDermott, 31 Cal., 271; Whaley *vs.* Columbus, 89 Ga., 781, 15 S. E., 694; Lothrop Pub. Co. *vs.* Lothrop, etc., Co., 191 Mass., 353, 77 N. E.,841, 5 L. R. A.,N. S., 1077; Schiffman *vs.* Schmidt, 154 Mo., 204, 55 S. W., 451; Thomas *vs.* New York, etc., R. Co., 139 N. Y., 163, 34 N. E., 877; Petty *vs.* Emery, 96 N. Y. App. Div., 35, 88 N. Y. Suppl., 823; Burdick *vs.* Chesebrough, 94 N. Y. App. Div., 532, 88 N. Y. Suppl., 13; Boynton *vs.* Faulk County, 7 S. D., 423, 64 N. W., 518.) *Averments of a lack of jurisdiction* (Epping *vs.* Robinson, 21 Fla., 36; Gum-Elastic Roofing Co. *vs.* Mexico Pub. Co., 140 Ind., 158, 39 N. E., 443, 30 L. R. A., 700; Wegner *vs.* Wiltsie, 23 Ohio Cir. Ct., 302; Ritchie *vs.* Carpenter, 2 Wash., 512, 28 Pac., 380, 26 Am. St. Rep., 877); *or of a legal casual relation between facts, for example, that certain facts caused certain other facts, or that by reason of a certain state of facts certain results followed* (Perry County Com'rs Ct. *vs.* Perry County Medical Soc., 128 Ala., 257, 29 So., 586; Anderson *vs.* White, 2 App. Cas., 408; Logansport *vs.* Kihm, 159 Ind., 68, 64 N. E., 595; Bentley *vs.* Bustard, 16 B. Mon., 643, 63 Am. Dec., 561; Griggs *vs.* St. Paul, 9 Minn., 246; Dezell *vs.* Fidelity, etc., Co., 176 Mo., 253, 75 S. W., 1102; Sprague *vs.* Fletcher, 67 Vt., 46, 30 Atl., 693); *or that a certain proceeding was unauthorized* (39 Cent. Digest, tit. Pleading, par. 17); *or that certain acts are lawful or in violation of law* (McLane *vs.* Leicht, 69 Iowa, 401, 29 N. W., 327; Templeton *vs.* Sharp, 9 S. W., 507, 696, 10 Ky. L. Rep., 499; State *vs.* Western Maryland R. Co., 98 Md., 125, 56 Atl., 394, 103 Am. St. Rep., 388; McCamant *vs.* Batsell, 59 Tex., 363; Chicago, etc., R. Co. *vs.* Indiana

Natural Gas, etc., Co., 161 Ind. 445, 68 N. E., 1008; Payne *vs.* Moore, 31 Ind. App., 360, 66 N. E., 483, 67 N. E., 1005; Heman *vs.* Schulte, 166 Mo., 409, 66 S. W., 163; Knapp, etc., Co. *vs.* St. Louis, 156 Mo., 343, 56 S. W., 1102; Nalle *vs.* Austin (Tex. Civ. App., 1893), 21 S. W., 375); *or that an injury occurred as a result of a criminal act* (National Ben. Assoc. *vs.* Bowman, 110 Ind., 355, 11 N. E., 316); *or averments of fraud; or the characterization of an act as fraudulent, without averring the facts which constitute such fraud.* (See numerous cases cited in 39 Cent. Digest, tit. Pleading, par. 28½.)

It will readily be seen that under these precedents, the charges of the complaint in the case at bar that the acts of defendant therein set forth were done in bad faith, or arbitrarily, or illegally or wrongfully, or maliciously, or without jurisdiction, or in violation of law, are mere legal conclusions, and, if not sustained by well-pleaded averments of facts, are not admitted by the demurrer and in no wise aid the complaint in setting forth a cause of action. And the specific facts well pleaded in the complaint, examined together with the court records incorporated therein, controverting, as we hold they do, each and all of these charges, there can be no question as to the correctness of the action of the court below in dismissing the complaint, even if counsel's own theory as to the liability of judicial officers in these islands were admitted to be correct.

Let us examine the grounds alleged in the complaint upon which plaintiff's counsel rest their charges of bad faith, keeping in mind the general rule that "the pleader is bound by, and estopped to controvert, allegations or admissions in his own pleadings." (39 Cent. Digest, tit. Pleading, par. 81, 82.)

As we understand the argument of counsel he contends that the bad faith of defendant is disclosed by his alleged wrongful acts in connection with the disposition by this court of the appeals in the two cases described in the com-

plaint, whereby, as it is alleged, he induced this court to render the alleged erroneous judgment which occasioned the alleged damages as set forth in the complaint.

Manifestly the very backbone of this contention is broken by our finding that the judgment in question was not erroneous. That finding, not only disposes of plaintiff's allegations that she suffered damages, as we undertook to show in the earlier portion of this opinion; it goes also to the very foundation of her contention that defendant was acting in bad faith in urging upon the court, as it is alleged he did, that the judgment in question should be entered.

Of course an unjust judge may render a just judgment in a particular case, and the mere fact that he has done so does not establish a claim on his behalf that he has on all occasions borne himself as a just and righteous judge. But it is difficult, if not impossible, to conceive a case wherein a court would be justified in holding that a judge who had entered a just and righteous judgment, in the performance of his duties as a judge in *a particular case*, did so in bad faith, or that he was actuated by any other than lawful motives in adjudicating *the particular case* in which this just and righteous judgment was rendered.

But even if it were admitted that the judgment as rendered by this court was in fact an erroneous judgment, or that this court erred when it directed its entry, and errs now in its interpretation and application of the facts developed in the cases incorporated into the complaint, we hold, nevertheless, that the charge of bad faith or of lack of good faith could not be sustained by proof of that fact, taken together with proof of the other facts well pleaded in the complaint. By the unanimous vote of those taking part in the adjudication of the two separate appeals mentioned in the complaint this court has heretofore construed the facts disclosed by the records in those cases, and interpreted the law applicable thereto, against the contentions of the plaintiff. Upon a full review of the facts and the

law as developed in the records of these cases, after listening to several days' oral argument by counsel and upon a careful study of the printed briefs, we unanimously adhere to our former findings. If we are correct in our conclusions, the defendant correctly voted for, and recommended the entry of the judgments in question. If we are in error, the defendant erred also, in the part he took in the adjudication of those cases. But it is very clear that such an error on his part, granting that it was committed, would furnish no support whatever to a charge of bad faith; so that the charge of bad faith set out in the complaint if sustained at all, must rest on the other allegations of fact well pleaded therein.

The complaint in express terms alleges that an "inspection" of the written opinions of this court, prepared by the defendant in the two appealed cases referred to therein, discloses that defendant willfully perverted the facts developed by the records in those cases, and, with intent to deceive his associates, set forth in those opinions false statements of those facts, knowing them to be false. But a careful inspection and examination of the records of those cases clearly discloses that each and every material fact set forth in those opinions is in substantial accord with the facts developed by the records submitted to this court.

The alleged false statements of fact in the first opinion (cause No. 4017), as set forth in the complaint, are:

> "(*a*) That said Solers were creditors, and preferred creditors of Martinez and Riu.
>
> "(*b*) That the judgment of the lower court dismissing the complaint, and dissolving the temporary injunction is hereby reversed, and the cause is remanded to the lower court with direction to take action not inconsistent herewith * * * without any finding of costs: defendant well knowing that such finding was a direct violation of said decision of March 27."

But we have shown already that the record, and the agreed statement of facts submitted by counsel, clearly dis-

close that "The said Solers were creditors and preferred creditors of Martinez and Riu;" and not only does it affirmatively appear in the record of cause No. 4017 that the original decision and memorandum order of March 27 had been amended and in effect rescinded, at the time when the opinion in the later case was written, but that fact is expressly alleged in the complaint itself.

The alleged false statements of fact in the opinion in cause No. 5719, as set forth in the complaint, are:

> "(*a*) That in the demand on the sheriff that he dismiss the levy in cause No. 3274, the guardian *ad litem* of said Solers alleges that their claim was a *preferred claim;* defendant well knowing from the record that in said demand they alleged under oath and claimed *as owners and partners.*
>
> "(*b*) That the Supreme Court decided in cause No. 4017 *that the Solers had a credit preferred to that of the plaintiff Alzua against Martinez and Riu for P9,868.29;* defendant well knowing from the record that the decision in cause No. 4017 had not been pleaded or introduced in evidence in said cause 5719.
>
> "(*c*) That cause 5719 was brought against said Alzua and her bondsmen upon the bond executed and delivered by them to the sheriff, for the purpose of recovering the sum of P9,868.29, together with damages interest and costs amounting to P11,068.00; defendant well knowing from the record that the sheriff, the acting sheriff, Visitacion Martinez, and Joaquin Riu were also defendants in said cause, and that the only sum at issue was 9,868.29 pesos Mexican currency, and that no damages had been proved.
>
> "(*d*) That said cause No. 5719 was instituted *on the first day of October, 1907, and after said decision of the Supreme Court dated September 14, 1907;* defendant well knowing from the record that said suit was instituted and filed *before said decision, to wit on August 22, 1907.*
>
> "(*e*) That the record in cause No. 5719 shows that said indemnity bond to the sheriff was given *after* the issuance of the injunction by the lower court in

cause No. 4017; defendant well knowing that the record in cause 5719 does not so show.

"(*f*) That the defendants Garcia, Ruiz, and Baylon as sureties, and Alzua as principal, had obligated themselves by said bond *to respond to the plaintiffs* (the said Solers) for the amount of the claim which said Solers had against the partnership of Martinez and Riu; defendant well knowing that said bond was given to the sheriff for his indemnity and that said Solers were not parties to said bond."

Referring to statement (*a*) it is sufficient to say that as we have shown already, the record clearly discloses that while it is true that in his original demand on behalf of the minors, a claim on their behalf as owners and partners was set up by their guardian, nevertheless this claim was promptly abandoned, and before the property was sold and before the proceeds were distributed, their claim as "*a preferred claim*" was duly asserted, and the sheriff and his counsel duly advised thereof.

The matters discussed in statements (*b*) and (*c*) have already been disposed of, and we have shown that in regard thereto the contentions of counsel for Alzua as to the legal effect of the facts developed by the record are not well founded. So also as to statement (*f*) touching the legal effect of the execution of the indemnity bond, we have shown that the contention of counsel for Alzua is not well founded, and that the execution of that bond did, in fact, impose upon the indemnitor and her bondsmen, an obligation to respond for the damages suffered by the minors as a result of the trespass of the sheriff.

As to the statements of facts referred to in paragraph (*d*) and (*e*), it may be admitted that there is an apparent discrepancy between the date of the institution of cause No. 5719 as disclosed by the record and as set out in the opinion; and that the record does not conclusively support the statement, in the history of the case set out in the opinion, that the indemnity bond was executed after the issuance

of the injunction in cause No. 4017. But on closer examination it will be found that these discrepancies are more apparent than real. The date mentioned in the history of the case set out in the opinion as the date of the institution of the action is October 1, 1907, but it appears that this is the date on which the amended complaint was filed, and that the original complaint in that action was filed on August 22, 1907; in the amended complaint new parties were brought into the action, and a new cause of action alleged, so that in one sense the action actually tried was commenced on the first day of October, 1907, the date mentioned in the opinion; but it is true that strictly and technically speaking the action was instituted on the 22d day of August, 1907, when the original complaint was filed. It also appears from the record that the indemnity bond was executed, and the injunction issued on the same day, October 14, 1907, but it does not expressly appear which was first in point of time; there is, however, some ground for the inference that the bond was given after the issuance of the injunction, as set out in the opinion. But it is very apparent that these minor discrepancies, if they can properly be said to be discrepancies, are of no possible import. The institution of cause No. 5719 a few weeks earlier or later than the date set out in the opinion, and the filing of the indemnity bond a few hours before rather than after the issuance of the injunction in case No. 4017, could have no possible effect upon the judgment to be rendered in cause No. 5719. These slight inaccuracies in the statement of the history of the case, if they can properly be called inaccuracies, could not have affected the reasoning of the court in arriving at its conclusions, whether it proceeded on the theory of the case as relied upon by the plaintiffs therein or upon that urged by the defendants. Manifestly, no charge of bad faith, or of willful wrongdoing can be predicated upon these alleged inaccuracies in the relation of wholly immaterial matter in the history of the case as given in the course of the opinion, since they could in no wise have

affected the judgment of the court, or the reasoning of the members of the court upon which that judgment was based.

The result then of our inspection of the opinions together with the records in the cases in question is to find that the allegations of the complaint that the defendant willfully perverted and misrepresented the facts developed in those records, and made false statements of the facts, knowing them to be false, are not well founded; and that the statements of all the material facts contained in the opinions in those cases are substantially correct and in substantial accord with the records of the cases wherein those opinions were entered. It clearly results that the charges of bad faith, of intent to injure the plaintiff Alzua, of wrongful intervention in the adjudication of those cases, and of official misconduct in the performance of the duties of the defendant as a member of this court are not sustained by the allegations touching the preparation of the opinions in those cases by the defendant, and on the contrary, are directly controverted by the facts well pleaded in the complaint and disclosed by an inspection and review of the records themselves.

Before passing to the last and only remaining allegation in the complaint, upon which counsel appear to rely in support of the charge of bad faith, we will glance for a moment at the allegations touching the connection of Justice Elliott with the case. This allegation evidently has its foundation in the fact that Justice Elliott's name is not attached to the opinion. We are utterly unable to discover how, upon the facts of this case, the mere fact that the opinion does not bear his signature (or that it was not presented to him for signature for some reason not alleged in the complaint) could even remotely tend to support a charge of bad faith on the part of the defendant. But since the pleader saw fit to allege this fact, and presumably had some purpose in doing so, we call attention to some facts of general knowledge in the courts of these Islands, which to our minds demonstrate that no inference of bad faith on the

part of the defendant would be supported by proof of the allegations that the opinion was not presented to Justice Elliott for his signature and that he took no part in the disposition of the case. Justice Elliott was at the time when the decision was filed the most recent addition to the court. He was not present at the date alleged in the complaint when the first case mentioned therein was before the court, and could not, therefore, have taken part in any of the earlier discussions of the questions raised in the extended course of this litigation. Within less than thirty days from the filing of the opinion he resigned from the court to accept an appointment in the Executive Branch of the Philippine Government. And finally, of the nine opinions of this court published in volume 14 of the Philippine Reports bearing date from the 7th day of January, 1910, to the 14th day of January, 1910 (the week immediately preceding the 15th day of January, 1910, on which the opinion in question was published), only one (the first) bears the signature of Justice Elliott. Manifestly, whatever were the reasons for Justice Elliott's abstention from participation in the adjudication of those cases (and we doubt not that there were sufficient reasons), no inference of bad faith on the part of the defendant could be sustained by proof of the bare allegations of the complaint touching his abstention from participation in the adjudication of this case.

The charge of bad faith, in so far as it is based on the allegations of the complaint touching the defendant's action in provisionally suspending the execution of the original memorandum order directing the entry of judgment in case No. 4017 has already been shown to be baseless. We have shown that it would have been the duty and the province of the court itself, if in session, to amend that order if it appeared to have been erroneously entered. We have shown that this original order, affirming instead of revoking the judgment of the court below, was undoubtedly erroneous. We have shown that the defendant, at the time when he did the acts complained of in this connection, was on duty as the

vacation justice of the court, and as such was charged with the duty of securing an opportunity to the court to make the necessary amendment in the erroneous order. We have shown that for this purpose he was clothed with the necessary interlocutory jurisdiction. It is very clear, therefore, that no charge of bad faith can be successfully predicated on proof that the defendant did his duty in the premises, and exercised his interlocutory jurisdiction over the case then pending before the court, to prevent a grave miscarriage of justice, and to secure to the court an opportunity, of which it later availed itself, to enter a final judgment in accordance with the very right of the cause.

But the absolute baselessness of the whole fabric of innuendo, insinuation, denunciation, and specific charges of wrongdoing in this connection, on which the plaintiff seeks to make a showing in the complaint of bad faith on the part of the defendant, will become still more apparent by contrasting the allegations of the complaint with the simple facts as developed by an inspection of the record.

With evident intent to lend a sinister aspect to defendant's conduct in this connection, and thus make a showing of bad faith on the face of the complaint, it is alleged that defendant acted surreptitiously, and "without consulting the other justices of the court;" and in their argument upon the demurrer, counsel boldly asserted that his action in this regard amounted to a falsification of a public record, one of the gravest crimes defined and penalized in the Spanish criminal code.

Let us see what the allegations of the complaint read together with the record actually disclose. On the 27th of March, 1907, the last day of the sessions of this court prior to the court vacations of that year a "short decision" or more accurately speaking a "memorandum order," in Spanish, was erroneously entered in the case hereinbefore described as case No. 4017, as follows:

> "Reserving the right to set forth hereafter the grounds of this decision, the judgment of the court

> below is hereby affirmed in all respects, with the costs of this instance against the appellants. And after the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be returned to the court whence it came for execution. It is so ordered."

Notice of this erroneous order was sent to counsel on the 30th of March. On or about the 8th of April, *and before judgment had been entered*, the defendant, at that time acting as vacation justice of this court, and clothed with the jurisdiction and authority conferred by law on such officers, provisionally amended this "memorandum order" by striking out the word "*confirmamos*" ("we affirm") and substituting therefor the word "*revocamos*" ("we reverse"), at the same time entering in the margin of the order, in parentheses, his initials "E. F. J." (E. Finley Johnson), indicating thereby that the amendment had been made by him. Two days thereafter formal and official notice of the change was served on counsel; and, on the morning of the very day when the amendment was made, counsel for Alzua and the sheriff were personally advised of the fact that the provisional amendment had been or was about to be made, as clearly and conclusively appears from the fact disclosed by the record, that at 11.55 a. m., of April 8, 1907, the firm of Hartigan, Rohde & Gutierrez, counsel for Alzua and the sheriff, filed in the clerk's office a motion for a rehearing. At the same time that the provisional amendment of the memorandum order was made by the defendant, he issued orders to the clerk that neither the original order nor the amended order should be executed until the further order of the court. Nothing further was done until the court reassembled, after vacation, in July, when the defendant reported what had been done, and the court, after due consideration, affirmed and ratified his action, as appears from the following order, duly entered on the minutes on the 25th day of July.

"Report having been submitted of the petition submitted by Messrs. Hartigan, Rohde & Gutierrez, in case No. 3132, Manuel Soler y Martinez *et al. vs.* Emilia Alzua *et al.*, injunction proceedings, moving the court for a rehearing, on the ground that the facts disclosed by the record do not sustain the judgment thereon, the court being duly informed thereof, resolved that the petition be denied. *And Justice Johnson having informed the court that in entering the decision in this matter an involuntary error had been committed, by inserting therein the word "confirmamos" (we affirm), in place of the word "revocamos" (we reverse), it was ordered that the amendment inserted therein be held to be ratified and affirmed.*"

It would not be easy to indicate a more open, public, and direct procedure whereby defendant could have secured the temporary suspension of the execution of the erroneous order pending the action of the full court, than that actually adopted by him. Of course the record does not disclose that he formally and officially consulted with his associates in this matter until they had returned from vacation and assembled in regular session. At the time when the amendment was made they were all absent on vacation; and as we have shown, it was his sworn duty to act for and on behalf of the court, on his own responsibility, if he was convinced that the memorandum order was erroneously entered, and that it should be suspended until the full court had an opportunity to take the proper final action in regard thereto. It affirmatively appearing not only that every act done by the defendant in this connection was done with due notice, both official and personal, to counsel for all the parties in interest, with due notice to the court itself, with a full record thereof spread upon the court files, and with the knowledge and intervention of the clerk of the court, and it also appearing that the counsel, the parties, the court itself and the clerk were all advised and informed of his action by the defendant at the very earliest available opportunity; it is

very clear that the surmises, conjectures and specific charges of bad faith which are set out in the complaint must fall to the ground so far as they are based on the alleged surreptitious manner in which the temporary suspension of the execution of the memorandum order was secured by the defendant. We are not now considering whether it might not have been more expedient, or more technically correct in form, had the defendant issued a formal order amending the original order and directing the suspension of the execution of both the original and the amended order pending the action of the court in session, rather than to have adopted the course which he actually pursued. This question can have no possible bearing on the issue involved herein. We are examining the course he actually pursued, to ascertain whether his action, viewed from the standpoint of the actuating motive therefor, the legal effects flowing therefrom, and the manner in which he did the acts which the record discloses he did in this connection, justify the charges of bad faith set forth in the complaint; and we conclude, that not only are these charges not sustained, but that they are directly controverted by the material and relevant facts disclosed by an inspection of the complaint itself, together with the exhibits and court records incorporated therein.

The argument might be extended further, but it would seem to be unnecessary. Enough has been said, we think, to show that even upon the plaintiff's own theory of the law in force in these Islands as to the civil liability of judicial officers for acts done in the exercise of their judicial functions, the complaint fails to set forth sufficient well-pleaded, material, and relevant facts to sustain a cause of action against the defendant.

Conclusion.

In the course of his oral argument, senior counsel for the plaintiffs formally requested this court, whatever action it might take on his appeal, to set out in its opinion a plain statement of the facts connected with the litigation under review in this action, as those facts are known to the court. As we understood him, however, later on in the discussion and in colloquy with counsel for appellee, he withdrew, or rather undertook to qualify this request by limiting the scope of the statement to the facts which he himself had set out in the complaint. Having in mind the form in which this appeal was finally submitted to us, we have conceived it to be our duty to exercise the most scrupulous care to exclude from this opinion, and from the reasoning upon which we base our judgment herein, any fact not disclosed by the complaint and the records referred to therein, or of which the court below might not and should not have taken judicial notice. But under all the circumstances, we think it not improper for us to say that it is for this reason and this reason alone that we have not complied with the request of counsel, further than to include his complaint as a marginal note attached to this opinion; and to add, each member whose signature is hereto attached speaking for himself, that had we felt at liberty to set forth the facts as originally requested by counsel, no fact known to this court or to any of its members would in any wise tend to weaken the force of the conclusions herein set out, or to detract from the force of the reasoning upon which these conclusions rest.

In this connection, however, some general observations as to the practice and procedure of this court in preparing its opinions and filing its decisions may not be out of place, and will shed some light upon our interpretation and treatment of some of the incidents set forth in the complaint, and of the contentions of counsel in relation thereto. These obser-

vations, while not restricted to the facts alleged in the complaint, will be strictly limited to matters of general knowledge in the courts of these Islands, and disclosed by public court records and the official reports of the Attorney-General.

The Supreme Court of the Philippine Islands annually disposes of some eight hundred cases, about equally divided between the civil and the criminal dockets, in some five hundred of which written opinions are filed. In addition, an exceptionally large number of motions and incidental matters are disposed of in minute order; the exceptionally large number of matters of this nature being due, in part at least, to the adoption in this jurisdiction of an American procedural system, without any substantial modification of the substantive law of the Islands as found in the codes of Spain. It is believed that a comparison of these figures with those of the half-hundred courts of last resort in the United States will disclose that the volume of the output of this court, as a whole and per capita of its membership, places it well within the rank of the first half dozen of those courts in this regard. (See the reporters generally and data assembled by the West Publishing Company and published in the Docket. March number, 1910?)

Furthermore, it is to be remembered that in disposing of this large volume of business, this court, unlike the appellate courts of the United States generally, is required, in all criminal cases and in ninety per cent of the civil cases, to review the evidence (which is not required by law to be printed and comes up in the original transcript of the stenographer's notes) so as to ascertain whether the judgment of the lower courts are "sustained by the weight of the evidence." This as a consequence of the absence of the jury system in the Philippines. Then, too, an unusual number of difficult and doubtful questions present themselves in this jurisdiction, arising out of the conflict of law resulting from the introduction of new laws and new institutions under American sovereignty, which must be interpreted and construed with due regard to the jurispru-

dence of both the old and the new sovereign. And finally, the mere mechanical difficulties, and in some cases the delays, involved in the preparation, submission, discussion and publication of the decisions of the court are notably increased by the fact that the official language of the courts in the Philippines is Spanish, while four of the members of this court are Americans, whose knowledge of that language has for the most part been acquired since coming to the Islands.

As might be expected, under such conditions, it has not infrequently become necessary for the court, especially as to cases decided just before adjournment for its annual vacation, to content itself with announcing its judgments in short "memorandum" decisions, definitely adjudicating the rights of the parties to the litigation without setting out the reasoning and authority upon which such judgments are based. In such cases the court usually reserves the right to prepare and publish extended opinions at a later day, if the publication of such extended opinions appears to be expedient or necessary. The purpose and object of this practice is, of course, to avoid unnecessary and useless delay in the administration of justice. So far as the litigants in a particular case are concerned, it is the judgment of the court, not the reasons on which the judgment is based, with which they are chiefly concerned. And it is believed that the interests of both the litigants and the public are best subserved in these cases by the prompt adjudication of the issues involved in a memorandum opinion, and the publication, at a later day, of a carefully prepared opinion, setting out the reasoning and authority therefor. (Cf. Ocampo *vs.* Cabañgis, 15 Phil. Rep., 626.)

Another consequence of the mechanical difficulties involved in the preparation of the opinions, orders, and judgments of the court in two languages, and of the necessity for the translation of those prepared in English into the official language, before being submitted for signature, is that "eternal vigilance" on the part of each member of the

court, is the price which must be paid to avoid the clerical errors, mistakes, and misunderstandings, which otherwise would so readily creep into the proceedings; and under the circumstances, no one doubts the right of this court, under the liberal doctrine of the American courts, to amend and correct clerical errors in the records of its proceedings, when such amendments or corrections are necessary to make these records speak the truth. In practice such amendments and corrections are and always have been very freely made.

The memorandum order which was provisionally amended by the defendant was filed on the day immediately preceding the adjournment for the court vacation in the year 1907. Counsel for defendant insists that the provisional amendment was merely an attempt to correct a purely involuntary clerical error, which had crept into the judgment in the haste of the adjournment proceedings. In support of his contention he refers to the above set out minute order dated July 28, 1907, wherein the court expressly declared that the word "*confirmamos*" (affirm) was "involuntarily" inserted instead of the word "*revocamos*" (reverse) in the original memorandum order. Of course the right and the duty of the defendant and of the court itself to correct an "involuntary" clerical error could not and would not be questioned under the circumstances. But we have not in any wise rested our decision on this contention, because while it is true that this court solemnly declared in the minute order that the amendment ratified by it was made to correct an "involuntary" error of this nature, we do not understand that the plaintiff, by incorporating the record of those proceedings into this complaint, formally admits that it was in fact so made. As we understand the admissions of the complaint, they only go to the verity of the facts disclosed by the records incorporated therein, and not to the truth or accuracy of the reasons assigned for the entry of the orders, judgments and decrees contained in these records. Accordingly we have wholly disregarded this contention of counsel for the defendant, and we have based our conclusions on the

broader ground of the right of the court to correct and amend errors of law or of fact in its orders and judgments, before such erroneous judgments and orders become final.

We here refer to this contention of counsel for defendant, merely in explanation of our action in this regard, and to avoid the possibility that our silence on this point might be construed as in some sort a recognition of the truth of plaintiffs' allegations that the original memorandum order confirming the judgment of the court below was in fact entered in accord with the original vote and action of the court, and not as contended by counsel for defendant, through an involuntary clerical mistake.

Senior counsel for plaintiffs having agreed in open court with counsel for defendant, on the submission of the case on appeal, that if the complaint as submitted is subject to demurrer, it cannot be amended so as to set forth a cause of action, and that fact appearing on its face: the judgment of the court below, sustaining the demurrer, and dismissing the complaint without day, should be affirmed with the costs of this instance against the appellant.

So ordered.

Arellano, C. J., Torres, Mapa, Moreland, and Trent, JJ., concur.

Judgment affirmed.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNALOT, PLAINTIFFS IN ERROR,

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

CHARLES A. DOUGLAS,
THOMAS RUFFIN,
HUGH H. OBEAR,
HARRY W. VAN DYKE,
Attorneys for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 306.

EMILIA ALZUA AND IGNACIO ARNALOT, PLAINTIFFS IN ERROR,

vs.

E. FINLEY JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

Statement.

This case comes before this court on writ of error to the Supreme Court of the Philippine Islands. It was there heard and determined, as it was also heard and determined in the Court of First Instance of Manila, on complaint and demurrer. The Supreme Court of the Philippine Islands having sustained the demurrer and held that the complaint

did not set out a cause of action against the defendant, the plaintiffs below sued out the writ of error, and now, as plaintiffs in error, pray for a review of the decision dismissing their complaint.

The charge of the complaint is misconduct on the part of the defendant, a member of the Supreme Court of the Philippine Islands, in two other cases that came before that court, in both of which cases judgments of the Court of First Instance of Manila in favor of the plaintiffs were in effect annulled, it being charged that the defendant accomplished or brought about the annulment in each case, and in accomplishing it acted outside of his jurisdiction, wrongfully and with intent to injure the plaintiffs, and thereby caused damage to the plaintiffs in the amount of P.65,000. And, in addition, the complainant prays for judgment for P.50,000 as punitive damages.

The Supreme Court of the Philippine Islands, in their opinion in this case, interpreted the complaint (see page 22 of Brief in Support of Motion to Affirm) as an attack upon "the good name and fame of one of our associates, and which indirectly reflects upon the credit and reputation of the whole court," and, while deprecating the necessity of having to pass upon the questions therein presented, stated (page 22 of Brief in Support of Motion) that they were comforted by the knowledge "that our action herein is subject to review by a higher court," and then proceeded to present reasons to sustain their decision in a serious and carefully elaborated argument which occupies nearly one hundred printed pages of the Brief in Support of Motion to Affirm (pages 14 to 101, inclusive).

Incidentally, in their opinion, the court state (page 55 of Brief in Support of Motion), in effect that, of their own motion and under authority of section 501 of the Code of Civil Procedure, they sent for the records of two other cases (which were evidently not before the Court of First Instance), and further state, in *considering the demurrer to the complaint* in this case, that they

> "made a very careful examination and inspection of the records in the two cases referred to, in order to ascertain whether the judgments entered therein were or were not erroneous, and we have concluded that the judgments entered by this court in both cases were justly and properly rendered in accordance with the pleadings and the evidence set out therein; and further that in each case the judgment entered is in accord with the very right of the cause."

Statements are again made in the said opinion, in paragraphs "Second" and "Third" on pages 26 and 27 of brief in support of motion, which make it very clear that the said records formed a basic part of the matter considered by the court below in passing upon the demurrer.

Yet the records in the said two cases were not made a part of the complaint, the nearest approach to a reference thereto being found in paragraph 20 of the complaint (page 21 of Brief in Support of Motion), where, after alleging that the acts of defendant in relation to said two causes were performed wrongfully and with intent to injure the plaintiff Alzua and with full knowledge of the facts set forth, it was added, in a separate sentence, that "Plaintiffs further allege that such knowledge appears from an inspection *of the decisions* in causes Nos. 4017 and 5719."

Furthermore, throughout the opinion we find reference after reference to the matters and facts disclosed by said records in other cases, and inferences of both fact and law drawn therefrom, together with the holding that as a matter of law, based on facts not pleaded in this case nor even set forth in the decisions in the other cases, said other cases (No. 4017 and No. 5719) were not decided erroneously. See pages 23, 50, 51, 54, 55, 57, 59, 64, 65, 68, 69, 74, 82, 86, 87, 88, 89, 91 and 93 of Brief in Support of Motion.

The opinion even goes so far as to take facts (page 77, *supra*), from counsel's brief in case No. 5719; and it distinctly sets out (page 87, *supra*), that, although "the complaint in express terms alleges that an 'inspection' of the

written opinions of this court, prepared by the defendant in the two appealed cases referred to therein, discloses that defendant wilfully perverted *the facts*," yet "a careful inspection and examination of the *records* of those cases clearly discloses that each and every material fact set forth in those opinions is in substantial accord with the facts developed by the records submitted to this court"; and (on page 93, *supra*), the court finally go to the extent of saying:

> "But the absolute baselessness of the whole fabric of innuendo, insinuation, denunciation, and specific charges of wrong-doing in this connection, on which the plaintiff seeks to make a showing in the complaint of bad faith on the part of the defendant, will become still more apparent by contrasting the allegations of the complaint with the simple facts as developed by an inspection of the record."

In the view of the court below, if the demurrer of the defendant admitted any part whatever of the plaintiff's complaint, that part is very difficult to discover.

The motion before this court to affirm the judgment of the court below is based on the following two grounds:

> (1) That it is manifest that the writ of error was taken for delay only, and
> (2) That the questions raised are so frivolous as not to need further argument.

And the statement is made, in effect, on page 7 of Brief in Support of Motion, that the first ground is a deduction from the second ground; in other words, that it is to be inferred from the frivolity of the questions raised that the writ was taken for the purposes of delay only.

ARGUMENT.

The grounds stated for defendant's motion to affirm would appear to be rather conclusively refuted and disposed of in the statement of defendant's counsel to the effect that "the purposes of delay only" are found by inference from "the frivolity of the questions raised" (page 7 of Brief in Support of Motion), if at the same time we consider counsel's further statements (on page 6 of Brief in Support of Motion, and in regard to the questions raised), that "the plaintiffs have instituted a suit entirely without foundation in fact, preferring charges of misconduct of the most serious character against defendant, and indirectly reflecting on the integrity of the entire court," and that "the court below, appreciating the seriousness of the charges, filed an elaborate and exhaustive opinion in the case."

And the absolute and conspicuous absence of frivolity in the questions raised becomes even more apparent when we turn to the opinion and find a labored argument of eighty-seven pages devoted to the answer to those questions and presenting reasons, of more or less vulnerability and subject to much criticism, why the judgment sustaining the demurrer should be affirmed. Though the court from which this opinion emanated should, in the decision of ordinary cases coming before them, speak "with the tongues of men and of angels," yet the character and length of the opinion in this case—a case against themselves, the court practically admit—is sufficient to raise a fair inference not only of the grave seriousness of the questions raised, but also of doubt as to the correctness of the disposition of those questions.

As to the first ground of the motion to affirm, it may be further said that it is peculiar, to say the least, to have a defendant demurrant charge the plaintiff with "purposes of delay" in seeking an authoritative expression of the law upon the question whether he has set out a cause of action

in his complaint. Good faith on the part of the defendant should incline that party to welcome such an expression, and he as well as the other members of his court (as the latter have indicated) should be comforted by the review of their decision by this honorable court.

A statement of the status of the case below, however, is enough to refute the argument that paintiffs may harbor any "purposes of delay." Here we find that there is no judgment delivered or pending of which the writ of error can act as a supersedeas. A decision upon the demurrer, without amendment, as has been agreed (page 101 of Brief in Support of Motion), is finally to determine the case. And the situation must remain exactly the same, not only pending the decision in this court, but for all time, unless this court should finally decide that the writ was well taken and that plaintiffs are correct in their contentions. Consideration of the demurrer by this court, therefore, can in no way injure the defendant, unless it be found that he is altogether wrong in his legal position, and even then he will have full opportunity to meet the plaintiffs' case with facts, if any facts there be that are in his favor.

The purposes of plaintiffs are in good faith to procure a reversal of the decision below, so that they may establish their substantive rights through proof of their allegations, and are not, and could not reasonably be, to delay their own case—a case wherein, without security of any kind from the defendant, they seek a personal judgment for damages.

Probably this brief should end at this point; but perhaps it may not be inappropriate to indicate to this court some of the "questions raised" in the case, which the plaintiffs would urge are far from frivolous. Among such questions are the following:

1. Whether the jurisdiction of a single member of the Supreme Court of the Philippine Islands, sitting as a vacation judge during vacation and having only interlocutory jurisdiction, extends to changing a final decision of the entire court from the affirmance of a judgment on merits of the Court of First Instance of Manila to the reversal of such judgment.

2. Whether the American law or the Spanish law applies in the Philippines upon the question whether a judge within his jurisdiction may act in bad faith, wrongfully and with intent to injure a party to a cause, without becoming liable to that party in a suit for damages; and how far the law applicable has been changed by the provisions of section 9 of act 190, providing that—

> "No judge, justice of the peace, or assessor shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith and within the limits of his legal powers and jurisdiction."

3. Whether the action of a single member of the Supreme Court of the Philippine Islands, sitting as a vacation judge during vacation and having only interlocutory jurisdiction, in changing a final decision of the court from an affirmance to a reversal of the decision below, was in the exercise of a judicial function or was merely a ministerial act. If the former, it may be argued that there was no jurisdiction, and therefore the judge would be liable for his act, if done, as charged in the complaint, wrongfully and with intent to injure the plaintiff; if the act be merely ministerial, it may be argued that under all of the decisions a judge has no immunity from suit for damages for doing such an act, if done wrongfully and with intent to injure the plaintiff, as charged in this case.

4. Whether the Supreme Court of the Philippines on demurrer to a complaint have the right to go outside the record of the case before them, as admittedly the court did in the

case at bar, and consider outside records and find facts and draw inferences of fact and of law from other sources and from other records in other cases not made a part of the complaint, either directly or by inference.

The only documents referred to and made a part of the complaint were the following:

> Exhibit A.—Copy of judgment in case No. 3274 (see page 15 of Brief in Support of Motion).
>
> Exhibit B.—Copy of sworn claim of the Solers in said case (see page 15, *supra*).
>
> Exhibit C.—Copy of indemnity bond in said case (see page 15, *supra*).
>
> Exhibit D.—Copy of purported decision of September 14, 1907, in case No. 4017 (see page 17, *supra*).
>
> Exhibit E.—Copy of decision of Court of First Instance of November 19, 1907, in case No. 5719 (see page 18, *supra*).
>
> Exhibit F.—Copy of decision of Supreme Court in case No. 5719 (see page 19, *supra*).
>
> Exhibit G.—Copy of judgment of Supreme Court of February 1, 1910, in case No. 5719 (see page 20, *supra*).

And yet the court below admittedly considered and based their decision upon the records in two other cases (Nos. 4017 and 5719). Then, apparently with some consciousness of the incongruity of their action in passing upon a demurrer in this case, they cited section 501 of the Code of Civil Procedure, as if in justification. Said section 501 is as follows:

> SECTION 501.—*Incomplete Record, How Corrected.*
>
> "If at any time when a case is called for trial, or during the trial, or afterwards, while the Supreme Court may have the same under consideration, it is discovered that the record is so incomplete that justice requires the case to be postponed until the record can be made complete, the court shall postpone the further consideration of the same and make such order as may be proper and necessary to complete the record, in the interests of justice. * * *"

And it may be respectfully submitted that it is a very violent distortion of the meaning of said section 501 to suggest that it contemplated allowing *records in other cases* to be called for and brought up under the provision for the completion by the court of the *record under consideration;* and certainly said section lends no countenance to the act here done of adding the other records brought up to the complaint before the court, so that said records may be considered on demurrer to the complaint.

The action of the court below in this connection can perhaps be accounted for by their familiarity with the Spanish law and procedure, with which they are continually coming into contact, and the fact that the Spaniard knows no such pleading as the demurrer or its principle. But the principle of the demurrer as a means for presenting pure legal questions is highly cherished in the minds of English and American lawyers, and the Americans have specifically provided for its adoption, in its full vigor, in the Philippine practice (sections 91 and 92 of the Code of Civil Procedure, act No. 190). And the Supreme Court of the Philippine Islands have themselves been engaged in a continuous effort to educate the Spanish and native courts and practitioners into the use of and respect for this salutary principle of pleading, as may be seen from such cases as United States *vs.* Perez, 1 Phil., 206; Santos vs. Yturralde, 6 Phil., 555; Lignete *vs.* Dario, 5 Phil., 224; Gulib *vs.* Bucquio, 16 Phil., 445, and Gov. of P. I. *vs.* Standard Oil Co., 20 Phil., 30.

But the fact now is, as apparent from the decision to be reviewed, that the highest court of the Philippines—the very fountain head of practice in the Islands, and upon whom rest the duty and responsibility of harmonizing the American civil procedure with those substantive laws of Spain left operative—find themselves in the decision before us in a position of greatly endangering the principle of the demurrer and weakening, if not utterly destroying, this most important feature of American practice.

The subject is of much importance and the results will be far reaching, and it is not too much to say that the Philippine bar, both Spanish and American, are looking with interest to the final disposition of the question of practice raised.

Urging that neither ground for the motion to affirm is manifest, and that neither ground can be substantiated on examination, it is respectfully submitted that the motion to affirm the judgment below should be overruled.

Respectfully submitted,

CHARLES A. DOUGLAS,
THOMAS RUFFIN,
HUGH H. OBEAR,
HARRY W. VAN DYKE,
Attorneys for Plaintiffs in Error.

[22830]

ALZUA *v.* JOHNSON.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 306. Motion to affirm submitted October 27, 1913.—Decided November 10, 1913.

This court is slow to revise the judgment of the highest court of a Territory on matters of local administration.

Judges of United States courts are not liable to civil actions for their judicial acts. *Bradley* v. *Fisher*, 13 Wall. 335.

The principle of immunity of judges from civil action for their official acts is so deep seated in the system of American jurisprudence that this court will regard it having been carried into the Philippine Islands as soon as the American courts were established therein.

The immunity of judges of the Supreme Court of the Philippine Islands from civil actions for official acts is the same as that of judges of the United States.

Act No. 190 of the Philippine Commission did not impose any liability to civil actions for official acts on any judge of the Supreme Court of the Philippine Islands; that act related only to inferior judges.

A statute, such as that involved in this case, providing that no judge shall be liable to civil action for official acts done in good faith, will not be construed as rendering such judges liable to civil action for acts done in bad faith by implication.

Quære whether the Philippine Commission has power to enact legislation making any judge liable to civil action for official acts.

21 Philippine Reports, 308, affirmed.

THE facts are stated in the opinion.

Mr. Evans Browne, *Mr. A. B. Browne*, *Mr. Alexander Britton* and *Mr. W. A. Kincaid* for defendant in error, in support of the motion.

Mr. Harry W. Van Dyke, *Mr. Charles A. Douglas*, *Mr. Thomas Ruffin* and *Mr. Hugh H. Obear* for plaintiffs in error, in opposition thereto.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the plaintiffs in error against a justice of the Supreme Court of the Philippine Islands. Its allegations much abridged are as follows: The plaintiff Alzua had a judgment, in Cause No. 3274, declared to be a first lien upon two stores, among other things, of Martinez, widow of Soler, and Riu, the judgment debtors; the sheriff levied; two Solers, sons of Martinez, demanded that the sheriff dismiss the levy as they were owners of the stock levied upon; the plaintiff Alzua gave the sheriff a bond, on October 14, 1905, and thereupon the sheriff proceeded to advertise and sell the property concerned. On the same October 14 the above mentioned Solers brought

suit (No. 4017) against the sheriff and the present plaintiff, Alzua, alleging that the Solers owned and were entitled to possession of the property and praying for an injunction and damages. The trial court decided for the sheriff and Alzua and the Solers appealed to the Supreme Court. On March 27, 1907, that court including the defendant affirmed the decision, postponing a statement of the grounds, and ordered judgment in twenty days and a return of the record ten days thereafter. The term ended on March 31. In vacation, on April 8, the defendant without consulting the other judges changed the judgment of affirmance to one of reversal and gave orders accordingly, so that on July 29 the record was returned to the court below with judgment reversed. The defendant then prepared a decision, filed September 14, which was signed by five justices including the defendant, and with intent to injure Alzua falsely stated therein that the Solers were preferred creditors of Martinez and Riu, well knowing that they alleged themselves to be owners and that Martinez and Riu were not parties to the suit and could not be bound by the decision. No final judgment has been rendered in the cause.

On August 22, 1907, the Solers brought another suit (No. 5719), against the sheriff, Alzua, her husband and the other obligors on the bond given to the sheriff, to which Martinez and Riu afterwards were made parties, alleging that the Solers had a preferred credit in the previously mentioned property. On November 29, the court dismissed the suit as to all but Martinez who confessed liability, and entered judgment against her. The Solers appealed to the Supreme Court and the case was submitted to six judges including the defendant. The defendant prepared a decision and with intent to injure the plaintiff set forth further false statements, viz: that in the demand on the sheriff that he dismiss the levy, the guardian *ad litem* of the Solers alleged that their claim was a

preferred claim, whereas they claimed as owners and partners; that the Supreme Court had decided in the former suit, No. 4017, that the Solers had a preferred credit for P. 9868.29, whereas the defendant knew that the decision in 4017 had not been pleaded or put in evidence; that the cause No. 5719 was brought upon the bond for the above sum together with damages, &c. P. 11068; the defendant knowing that the sheriff, acting sheriff, Martinez, and Riu were also defendants and that the first named sum alone was in issue and no damages proved; that the cause No. 5719 was instituted on October 1, 1907, well knowing that it was begun on August 22, before, not after the last decision (of September 14), in the former case; that the record in No. 5719 shows that the bond was given to the sheriff after the issue of an injunction in No. 4017, whereas it does not; and finally that the sureties on the bond had bound themselves thereby to respond to the Solers for the amount of the claim that the Solers had against Martinez and Riu, whereas the bond was given to the sheriff and the Solers were not parties to it.

The declaration goes on to allege that with the same intent the defendant did not discuss the actual questions or evidence; that he obtained the signatures of the other judges upon his representation that the decision set forth an impartial and fair statement of the case, he knowing the contrary; and further that Justice Elliott who sat at the hearing did not sign the decision and was not informed of it. It further alleges that defendant omitted the names of Martinez and Riu and directed the clerk to enter judgment against the other defendants only, knowing who were parties and what had been the judgment below. Thereafter on February 8, 1910, pursuant to the decision and defendant's orders, judgment was entered against Alzua and three others for P. 11068 with interest, on the ground that the Solers were creditors of Martinez and Riu and preferred to Alzua; although, it is said, Mar-

tinez and Riu were absolved by the judgment. Averments are reiterated that the defendant performed all the acts alleged in relation to Nos. 4017 and 5719 wrongfully with intent to injure the plaintiff with knowledge of the facts set forth and that such knowledge appears from inspection of the decisions in Nos. 4017 and 5719. Execution issued and the present plaintiffs paid the judgment in 5719, but to do so had to sell their property at a great sacrifice. The plaintiffs therefore seek judgment for the actual value of the property sold, the income that would have been realized, and punitive damages; P. 115000 in all. A demurrer to the declaration was sustained by both courts below, and the plaintiffs being unable to better their case by amendment, judgment was entered and the complaint dismissed.

Abridged once more this complaint is that the defendant without jurisdiction entered a judgment against the plaintiff contrary to an order of the full court, and in the opinion by which the full court ratified the change made a false statement of fact; that in the opinion of the full court in a second suit he inserted various false statements, including one attributing to the first judgment an effect that it could not have in the circumstances, all with full knowledge and intent to injure the plaintiff, which knowledge appears from inspection of the opinions, and that the plaintiff had to pay the second judgment at a sacrifice.

It is apparent that there are other difficulties beside the immunity of the judge in the way of such a suit. In the first place the Supreme Court of the Philippines decides that the judge had jurisdiction to make the change—a matter of local administration on which we should be very slow to revise the judgment. *Gray* v. *Taylor*, 227 U. S. 51, 57; *Fox* v. *Haarstick*, 156 U. S. 674, 679. Next, the judges, on inspection of the opinions and records which they regard as incorporated in the complaint and for which they were responsible by their assent, are of opinion that the statements in the former opinions were

correct and that the decisions were right, and of course reject the suggestion that they were deceived when they rendered the judgments. It might be added that the complaint hardly makes it clear that any of the alleged misstatements, some of which at least were irrelevant to the result, were the determining causes of the judgment of which the plaintiff complains.

But however it may be as to the matters that we have stated, we regard it as fundamental that the immunity of the defendant from this suit is the same as that of judges in the United States, which is established beyond dispute. *Bradley* v. *Fisher*, 13 Wall. 335; *Randall* v. *Brigham*, 7 Wall. 523. Whatever may have been the Spanish law this is a principle so deep seated in our system that we should regard it as carried into the Philippines by implication as soon as we established courts in those islands. Vol. I, Acts of Philippine Commission Nos. 136, 222, pp. 252, 556. Act of Congress of July 1, 1902, c. 1369, §§ 1, 5, 32 Stat. 691, 692. Reasons somewhat analogous to those adverted to in *Carrington* v. *United States*, 208 U. S. 1, 7, make the rule perhaps more important in the Philippines than it is here. It is true that in Act No. 190, § 9, of the Philippine Commission (1901), it is provided that "no judge, justice of the peace or assessor shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith, and within the limits of his legal powers and jurisdiction," and it is argued that this imports that any judge shall be liable for a judgment rendered in bad faith. But without considering the question of power, we are of opinion for the reasons to which we have referred that this should not be construed to convey such an implication, at least as to judges of the Supreme Court. The section is shown to have had in mind inferior judges and the like by its mention of justices of the peace and assessors as to whom a different rule has been held to prevail.

We think it manifest that the question on which the decision of this cause depends needs no further argument and that the judgment should be affirmed.

Judgment affirmed.